86

(1)

Supreme Court, U.S.
FILED

No. 071083

FEB 20 2008
OFFICE OF THE CLERK

In The Supreme Court of the United States

UNITED ELECTRICAL CONTRACTORS ASSOCIATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

Roger S. Kaplan
Counsel of Record
Steven S. Goodman
Christopher M. Valentino
JACKSON LEWIS LLP
58 South Service Road, Suite 402
Melville, New York 11747
(631) 247-0404

Counsel for Petitioner

Dated: February 20, 2008

THE LEX GROUP^{DC} ♦ 1750 K Street N.W. ♦ Suite 475 ♦ Washington, DC 20006
(202) 955-0001 ♦ (800) 815-3791 ♦ Fax: (202) 955-0022 ♦ www.thelexgroupdc.com

QUESTIONS PRESENTED FOR REVIEW

(a) Whether under the National Labor Relations Act and the Supreme Court's decision in Charles D. Bonanno Linen Serv., Inc. v. N.L.R.B., 454 U.S. 404 (1982), collective bargaining on a multiemployer basis by a certified association bargaining representative may be rejected as futile because of substantial fragmentation of the bargaining unit, where, prior to execution of a final multiemployer contract member employers are induced by the union involved to sign "interim" and permanent agreements requiring that the member employers abide by another multiemployer association's collective-bargaining agreement which, inter alia, includes provisions for the payment of contributions to multiemployer employee benefit funds established under that agreement or prescribing terms to survive execution of a multiemployer collective-bargaining contract, that result in the member employers' loss of a vested interest in the outcome of their association's negotiations, and abandonment of support for their bargaining representative.

(b) Assuming said "interim" and permanent agreements may contribute to substantial fragmentation of the unit, whether fragmentation of a multiemployer association may be measured solely by the number of employers who signed "interim" agreements, without regard to the number of bargaining unit employees employed by each such employer, and the cumulative effect of those employers' actions on the original bargaining unit.

LIST OF ALL PARTIES TO THE PROCEEDING (Rule 14.1(b) Statement)

The names of the parties to the proceeding in the court whose judgment is sought to be reviewed are the United Electrical Contractors Association and the National Labor Relations Board.[1]

CORPORATE DISCLOSURE STATEMENT

The Association has no parent corporation or publicly held company owning 10% or more of the corporation's stock.

---

[1] Although the caption of the case in the court below indicated the presence of petitioning parties other than the United Electrical Contractors Association ("et al."), the National Labor Relations Board had determined in the underlying agency proceedings that the member employers of the Association, who had been named as respondents in those proceedings, never had been served with the unfair labor practice charges, and dismissed the proceedings as to them. Expert Elec., Inc., 347 N.L.R.B. No. 2 (2006) (91a – 164a). Accordingly, United Electrical Contractors Association remained as the only private party in the proceeding below.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

LIST OF ALL PARTIES TO THE PROCEEDING (Rule 14.1(b) Statement) ii

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE PETITION 11

This Court Should Determine Whether The "Interim Agreements" Requiring Adherence To Another Association's Multiemployer Contract Deprived Employers Of A Continuing Stake In The UECA Negotiations 12

This Court Should Grant Review To Clarify The Material Effect Of The Permanent Agreements On The Rationale of *Bonanno* 15

Bonnanno Is Misapplied Where An Association Bargaining Representative Reasonably Concludes Its Unit Is Too Fragmented To Continue Bargaining On A Multiemployer Basis 17

CONCLUSION 22

APPENDIX

Opinion of the
United States Court of Appeals for the
District of Columbia Circuit
entered November 27, 2007 ..... 1a

Decision and Order of the
National Labor Relations Board
(347 NLRB No. 1)
entered May 15, 2006 ..... 5a

Decision and Order of the
National Labor Relations Board
(347 NLRB No. 2)
entered May 15, 2006 ..... 91a

TABLE OF AUTHORITIES

Page(s)

Cases

Brown v. Pro Football, Inc.
d/b/a Washington Redskins, et al.,
518 U.S. 231 (1996) 12, 18

Callier's Custom Kitchen,
243 N.L.R.B. 1114 (1979).....11

Charles D. Bonanno Linen Serv., Inc. v.
N.L.R.B.,
454 U.S. 404 (1982) .....passim

Connell Typesetting Co.,
212 N.L.R.B. 918 (1974).....9, 10, 18, 19

Joseph J. Collier, et al., d/b/a
Collier's Custom Kitchens,
243 N.L.R.B. 1114 (1979),
enforced on other grounds,
630 F.2d 595 (8th Cir. 1980) 19

N.L.R.B. v. Charles D. Bonanno Linen Serv., Inc.,
630 F.2d 25 (1st Cir. 1980).....19

N.L.R.B. v. D.A. Nolt,
406 F.3d 200 (3d. Cir. 2005),
petition for panel to hearing granted,
412 F.3d 477 (3d Cir. 2005).....20

Retail Associates, Inc.,
120 N.L.R.B. 388 (1958) 17, 18

Retlaw Broad. Co. v. N.L.R.B.,
172 F.3d 660 (9th Cir. 1999) 21

Tobey Fine Papers of Kansas City,
245 N.L.R.B. 1393 (1979),
enforced, 699 F.2d 841,
107 L.R.R.M. 2221 (8th Cir. 1981) 20

Typographic Serv. Co.,
238 N.L.R.B. 1565 (1978) 9, 16

United Elec. Contractors Ass'n a/k/a
United Construction Contractors Ass'n,
312 N.L.R.B. 1118 (1993) 5

Statutes

28 U.S.C. § 1254(1) (2007) 2

28 U.S.C. § 2101(c) (2007) 2

29 U.S.C. § 151 (2007) 2

29 U.S.C. § 157 (2007) 3

29 U.S.C. § 158(a)(1) (2007) 4, 6, 9

29 U.S.C. § 158(a)(5) (2007) 4, 6, 9, 10

29 U.S.C. §159(a) (2007) 5

29 U.S.C. § 160(e) (2007) 2

Rules

Fed. R. Civ. P. 19.....10

U.S. Sup. Ct. R. 13.1 2

PETITION FOR A WRIT OF CERTIORARI

United Electrical Contractors Association (hereinafter "UECA" or "the Association") respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The Judgment of the United States Court of Appeals for the District of Columbia Circuit, entered November 27, 2007, is not officially reported (D.C. Circuit Rule 36), but is unofficially reported at 2007 U.S. App. LEXIS 30272. It is reproduced at Appendix 1a – 4a.

The underlying Decision and Order of the National Labor Relations Board (hereinafter "the Board" or "the N.L.R.B.") (including the Decision of its Administrative Law Judge), entered May 15, 2006, and designated as Expert Elec., Inc., 347 N.L.R.B. No. 2 (2006), is not yet reported in official Board volumes, but is unofficially reported at 180 L.R.R.M. 1341.[1] The Board's Decision and Order is reproduced at Appendix 91a – 164a.

The Decision and Order of the N.L.R.B. in a companion case, United Elec. Contractors Ass'n a/k/a United Construction Contractors Ass'n (including the Decision of its Administrative Law Judge) (N.L.R.B. Case Nos. 29-CA-18784, -21456-5, *et al.*),

---

[1] Unofficial citations refer to the Labor Relations Reference Manual, published by The Bureau of National Affairs, Inc. (Washington, D.C.).

also entered May 15, 2006 and designated as 347 N.L.R.B. No. 1 (2006), is not yet reported in official Board volumes, but is unofficially reported at 180 L.R.R.M. 1336. This Decision and Order is reproduced at Appendix 5a – 90a. While the Decision and Order in this latter case is not directly involved in this petition, it is referred to by the Board in its Decision and Order in the case sub judice, and therefore is included in the Appendix for the Court's convenience.

JURISDICTION

Judgment below was entered on November 27, 2007. This petition is timely under 28 U.S.C. § 2101(c) (2007) and Supreme Court Rule 13.1. This Court has jurisdiction to review the judgment of the United States Court of Appeals for the District of Columbia Circuit under Section 10(e) of the National Labor Relations Act, 29 U.S.C. §§ 151, 160(e) (2007), and 28 U.S.C. § 1254(1) (2007).

STATUTORY PROVISIONS INVOLVED

National Labor Relations Act, 29 U.S.C. § 151 (2007), et seq.:

> **Section 7.:**
>
> **Right of employees as to organization, collective bargaining, etc.**
>
> Employees shall have the right to self-organization, to form, join, or assist

labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section [8(a)(3)] 158(a)(3) of this title.

29 U.S.C. § 157 (2007).

Section 8.:

Unfair labor practices.

(a) Unfair labor practices by employer.

It shall be an unfair labor practice for an employer –

(1) To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section [7] 157 of this title.

* * *

(5) to refuse to bargain collectively with the representatives of his

> employees, subject to the provisions of Section [9(a)] 159(a) of this title.

29 U.S.C. § 158(a)(1), (5) (2007).

Section 9.:

Representatives and elections

(a) Exclusive representatives; employees' adjustment of grievances directly with employer

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* that the

> bargaining representative has been given the opportunity to be present at such adjustment.
>
> 29 U.S.C. § 159(a) (2007).

STATEMENT OF THE CASE

This case arises from a Decision and Order of the NLRB concluding that Petitioner UECA unlawfully withdrew recognition from, and ceased to bargain with, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO ("Local 3" or "the Union"), on behalf of individual employers who were or had been members of the Association multiemployer bargaining unit. The Board rejected UECA's argument, inter alia, that the unit had become so fragmented as to warrant discontinuance of bargaining by UECA on a multiemployer basis.

On February 23, 1993, following an October 18, 1989 NLRB-conducted election, the Board certified Local 3 as the bargaining representative for all electricians and certain other electrical workers employed by the 91 employer members of UECA.[2] Appendix at 115a – 116a, 123a – 124a. The certification named UECA and each of the member employers. UECA refused to bargain in order to test the Union's certification. Appendix at 116a. This

---

[2] See United Elec. Contractors Ass'n a/k/a United Construction Contractors Ass'n, 312 N.L.R.B. 1118 (1993) (noting the date of the election). Local 3 received more votes than a Teamsters local that had represented UECA's members' employees for about 20 years. Appendix at 116a.

resulted in the Board granting its General Counsel's motion for summary judgment upon an administrative complaint alleging violations of Sections 8(a)(1) and (5) of the NLRA. The Board directed that UECA bargain with Local 3.[3] Appendix at 116a. On September 2, 1994, the United States Court of Appeals for the Second Circuit enforced the Board's bargaining order in an unreported order. Appendix at 116a.

From October 1994 through June 1998 the parties met in approximately 50 bargaining sessions, but no collective-bargaining agreement was reached. Appendix at 124a. By May 1998, of the 91 certified member companies, UECA was reduced to only about 22 active members. Appendix at 126a. (The General Counsel was able to identify only 58 member employers as still being in business. Appendix at 129a – 130a.) Moreover, during the course of negotiations and the Board proceedings, twenty employers signed "interim" agreements with Local 3. Three of the agreements, signed before UECA began bargaining, in fact were permanent agreements. W.T. Hickey's agreement was still another permanent agreement.[4] They contained no reference at all to any UECA-Local 3 agreement.

---

[3] See n. 3, above.

[4] The ALJ found that 19 member employers had signed interim agreements, but the record indicates there were 20. Appendix at 128a. (The ALJ did not include Local 3's approval of a 1993 collective-bargaining agreement between UECA member W.T. Hickey and IBEW Sister Local 25, on Long Island, which provided that Hickey would sign an agreement with Local 3 if the company performed work in New York City.)

Each remaining interim agreement provided, among other things, that the wages, benefits and other terms and conditions of employment of covered employees would be the same as the then existing collective-bargaining agreement between the New York Electrical Contractors Association (NYECA) and Local 3,[5] but would terminate upon the execution of a UECA-Local 3 agreement. Appendix at 129a. The interim agreements, however, waived the six month waiting period for employees' eligibility for medical coverage normally required under the NYECA-Local 3 contract and a number of them also exempted the signatory's employees from participating in a Local 3 furlough (mandatory layoff) program for two years. Appendix at 129a.

In addition, two interim agreements were accompanied by memoranda of understanding that expressly stated the contractual provisions set forth in the memoranda were to apply after a UECA-Local 3 agreement became effective. UECA's executive director estimated that about 300 employees (more

---

[5] During the period in issue, the NYECA agreement was renegotiated, in some cases more than once, for all of the employees who signed permanent agreements and several of the employers who signed interim agreements.

than half the unit) were covered by "interim" agreements.[6] Appendix at 129a – 130a. He also stated that employers who signed such agreements failed thereafter to cooperate in the negotiations with UECA by refusing to provide information requested by Local 3[7] and otherwise not supporting the Association in its bargaining with Local 3. Appendix at 129a – 130a. His testimony was undisputed. Meeting in May 1998, the UECA Board of Directors concluded that it would be "futile" to continue bargaining with Local 3 as a multiemployer association, and that negotiations should continue with the Union on an individual employer basis. Appendix at 126a – 127a.

On June 11, 1998, UECA by its counsel advised Local 3 that it no longer was representing any employers in negotiations citing, inter alia, the "interim" agreements and loss of member support. Appendix at 126a – 127a. It suggested that Local 3 contact individual employers who were part of the multiemployer unit to continue bargaining. Id.

---

[6] One of the UECA member employers, V&R Electrical, alone had 150-175 employees out of a total unit population of about 600. Of the UECA members who had not signed "interim" agreements with Local 3, only two (Tap Electric and Eugene Iovine, Inc.) had more than 25 employees. While Local 3 disagreed with the assessment, according to the ALJ, it did so because, in its view, only 19 employees signed interim agreements. Appendix at 129a – 130a. Since the ALJ did not mention W.T. Hickey among the employers who signed the interim or permanent agreements, his decision does not specify to what extent Hickey's employees figured in UECA's calculation of employees covered by such agreements.

[7] See United Elec. Contractors Ass'n, 347 N.L.R.B. No. 1 (2006).

Later, UECA's counsel sent the Union a list of 22 employers who had stated they were prepared to bargain individually with Local 3, and said that UECA's counsel would represent them. Appendix at 130a. The Union rejected this offer and filed a refusal-to-bargain charge against UECA. Appendix at 117a.

The ALJ found that UECA violated Sections 8(a)(5) and (1) of the Act by withdrawing from multiemployer bargaining with Local 3. He concluded all the interim agreements entered into by Local 3 with the individual employers were "temporary" in nature and provided that they would terminate upon the effective date of a permanent agreement between UECA and Local 3.[8] Appendix at 136a – 138a. He also rejected as inapposite two cases relied on by UECA, Typographic Serv. Co., 238 N.L.R.B. 1565 (1978), and Connell Typesetting Co., 212 N.L.R.B. 918 (1974). As to the former case, the ALJ observed that here, unlike Typographic Serv. Co., the interim agreements all were the same; they

---

[8] In so concluding, the ALJ ignored the permanent agreements and discounted the memorandum of understanding that were signed by two UECA member employers in addition to the interim agreements, and which provided that their terms would survive the expiration of any interim agreement. Appendix at 139a. The ALJ reasoned these memoranda addressed the particular needs of the companies which had legitimate needs in finishing outstanding work based on methods and practices it expected to continue. He further concluded the standard interim agreement would have caused the companies to agree to the NYECA contract which prohibited the methods of work performed on these jobs. "Thus," he said, "the Memorand[a] addressed a limited need for the work to be continued and completed through the execution of the UECA contract." Appendix at 138a – 139a.

did not differ from one employer to another. As to Connell, where the Board found no violation where a multiemployer bargaining agent refused to bargain because of fragmentation after 23 out of 36 member employers signed interim agreements, the ALJ found an insufficient number of employers here signed such agreements. Appendix at 139a – 140a.

The Board affirmed summarily. Appendix at 92a. It evidently found no "unusual circumstances" that would justify withdrawal from multiemployer bargaining because the unit was "substantially fragmented," as that phrase has been construed narrowly. Appendix at 97a. "Thus," the Board concluded, "any internal disharmonies that UECA may face, do not affect our ability to accord relief for its 8(a)(5) violations alleged and found by ordering UECA to recognize and resume bargaining with the Union on the employer-members' behalf."[9] Appendix at 97a.

---

[9] The Board was addressing the issue whether a bargaining order directed to UECA would be appropriate where the Association's member employers were not bound by its order, because they had not been served with the charge. The Board rejected UECA's contention that the bargaining order would not be appropriate, finding that Federal Rule of Civil Procedure 19 was inapplicable and that the employers were not "necessary parties." Appendix at 96a – 97a. Nevertheless, the Board's rationale may have informed its affirmance of the ALJ's violation finding regarding UECA's withdrawal from multiemployer bargaining.

The court of appeals affirmed. It decided:

> United [UECA] argues that interim agreements between the Union and individual employers within United fragmented the bargaining unit. The record supports the administrative law judge's finding that these interim agreements did not enable United to withdraw from bargaining. The vast majority of the interim agreements were temporary – they would be superseded by a contract reached by United and the Union. Charles D. Bonanno Linen Serv., Inc. v. N.L.R.B., 454 U.S. 404, 414-15 (1982). Further, the interim agreements did not dissipate United to the point that multiemployer bargaining was not viable. Callier's Custom Kitchen, 243 N.L.R.B. 1114, 1117 (1979) (finding no fragmentation when 40 of 65 employers signed interim agreements).
> Appendix at 3a.

This petition followed.

REASONS FOR GRANTING THE PETITION

This Court should grant this petition and issue a writ of certiorari because the court of appeals decided an important question of federal labor law in a way that conflicts with this Court's decision in Charles D. Bonanno Linen Serv., Inc. v. N.L.R.B., 454 U.S. 404 (1982). As more fully discussed below,

the Board's decision virtually eliminates any possibility of establishing "fragmentation" as a lawful basis for terminating multiemployer bargaining in disregard of this Court's decision. Because multiemployer bargaining by its nature affects large numbers of employers and employees, there is a heightened interest in and need for defining the rights and obligations of the parties to this process. See Brown v. Pro Football, Inc. d/b/a Washington Redskins, et al., 518 U.S. 231, 240 (1996) ("Multiemployer bargaining itself is a well established, important pervasive, method of collective bargaining . . . . [It] accounts for more than 40% of major collective-bargaining agreements, and is used in such industries as construction . . . . ").

In rendering its judgment, the court of appeals evidently adopted the rationale of the ALJ, as affirmed by the NLRB. It rejected UECA's argument that the Board ignored the intent and effect of these destructive "interim" and permanent agreements.

This Court Should Determine Whether The "Interim Agreements" Requiring Adherence To Another Association's Multiemployer Contract Deprived Employers Of A Continuing Stake In The UECA Negotiations.

The ALJ here, did no more than recapitulate the law and conclude that all the interim agreements were "temporary" in nature; they provided that for the present and immediate future, wages, benefits and other terms and conditions of employment would be the same as the current agreement between Local

3 and the rival NYECA. Appendix at 136a – 139a. His finding was based solely on a recitation in the agreements that they would terminate upon the effective date of a UECA-Local 3 contract, and that the parties to the written agreement would execute such a contract. Id. From there, the ALJ concluded that the employers who signed these agreements "maintained a vested interest in the outcome of final UECA-Local 3 negotiations and an 'equivalent status' in the outcome of multiemployer negotiations because the final contract would apply to all employers, including the signers of interim agreements." Appendix at 136a. He therefore concluded that the disputed agreements were lawful and did not cause unit fragmentation justifying the abandonment of multiemployer bargaining.

The ALJ, however, did not assess how the employers' obligations under a NYECA agreement would undermine their "vested interest" in a final UECA-Local 3 agreement as understood by their bargaining representative. The cases relied on by the ALJ or NLRB did not arise from the multiemployer bargaining representative's determination that *it* no longer could conduct multiemployer negotiations with reasonable effectiveness. Instead, the cases involved member employers who sought to evade group bargaining obligations. Nor did the cases involve interim agreements similar to those involved here. Employers there were not induced to agree to a competing multiemployer association contract (the terms of which their association representative rejected in bargaining) from which it was highly unlikely they would ever extricate themselves. The

employer signatories to the interim agreements here immediately became participating employers in the multiemployer pension, health, disability and welfare funds sponsored by NYECA under its multiemployer association agreement with Local 3 (UECA Ex. 5-24).[10] In doing so, these employers had to sever their relationship with and cease contributions to UECA funds. These employers henceforth had nothing to gain from a UECA-Local 3 settlement. In fact, they actually risked losing funds contributions made under the "interim" agreement if a UECA-Local 3 agreement ever was reached. Further, by denying UECA members who refused to sign interim agreements the ability to grant wage increases to unit employees who had not received increases since 1994, and by refusing consent to a statutory apprenticeship program which UECA was seeking in order for its members to compete effectively for certain public work — thereby causing the New York Department of Labor to withhold program approval (Tr. 408)[11] — Local 3 induced employers to sign the "interim" agreements so they could retain their employees. This was calculated to and had the effect of driving a wedge between those who signed with Local 3 and the diminishing corps of active members supporting UECA. By being pushed into a competing association agreement, signatories to "interim" agreements were deprived of any

---

[10] UECA Ex. refers to UECA exhibits submitted in the NLRB unfair labor practice hearing in Case Nos. 29-CA-21967 and 22399.

[11] Tr. refers to the transcript of the proceedings in the NLRB unfair labor practice hearing in Case No. 29-CA-21967 and 22399.

continuing stake in the outcome of the unit negotiations. This Court in Bonanno did not contemplate or approve such an arrangement when it gave its imprimatur to "interim agreements" in general. It should grant this petition and make clear that the limits of Bonanno were exceeded here.

This Court Should Grant Review To Clarify The Material Effect Of The Permanent Agreements On The Rationale Of *Bonanno*.

What we have said here of "interim" agreement signatories applies with even greater force to those employers who signed enduring agreements adopting the terms of the NYECA accord, evidently with impunity. Three contractors (Maximum, Milad and Positive) signed permanent agreements with Local 3 in 1991 (nevertheless characterized as "interim") binding the signatories to "all provision of [the NYECA agreement]" without providing for termination upon execution of a UECA agreement. Appendix at 128a. W.T. Hickey signed a permanent agreement with a sister IBEW local with the approval of Local 3. See footnote 5, supra. There is no warrant under Bonanno for condoning these agreements. Furthermore, two other "interim" agreements (for V&R Electric and Impulse Electric) included memoranda of understanding stating that they "shall remain in effect under any Union/UECA agreement", also provided for the survival of special terms beyond execution of any UECA-Local 3 agreement. Appendix at 137a. These employers, too, had little interest in the continuing negotiations by their Association; their needs were addressed on both an interim and long-term basis and they too

ceased to cooperate with the Association. Thus, 30% of all agreements signed by UECA member employers with Local 3 (six out of 20) were permanent in whole or in part.[12] Yet, the Board and the court of appeals, by adopting an unduly deferential approach toward the ALJ's flawed decision, marginalized the palpable effect of these permanent agreements in combination with the "interim" agreements by concluding they did not so fracture the Association as to warrant the cessation of multiemployer bargaining. This Court should seize this opportunity to address the extent to which permanent agreements may affect the proper application of Bonanno.

---

[12] The ALJ condoned these memoranda because "they addressed particular needs of companies which had a legitimate interest in finishing outstanding work based upon the methods and practices it [SIC] expected to continue" that would not have been possible under the NYECA agreement. Appendix at 138a. Even if this assessment is true, it does not justify countenancing an agreement which by its terms applies after a UECA-Local 3 contract becomes effective. Only UECA could agree to such terms with the Union. Furthermore, this demonstrates that, contrary to the ALJ's decision, Local 3 was making individualized deals with member contractors in the guise of interim agreements. See Typographic Serv. Co., 238 N.L.R.B. 1565 (1978).

Bonanno Is Misapplied Where An Association Bargaining Representative Reasonably Concludes Its Unit Is Too Fragmented To Continue Bargaining On A Multiemployer Basis.

The Board, with judicial approval, disregarded the importance of the members whose "vested interest" no longer resided with the outcome of UECA's negotiations. The twenty affected employers included major contractors who employed more than 300 workers, nearly 50% of the UECA bargaining unit employees. They invariably withdrew cooperation and support from UECA following their entry into such agreements. The Board's failure to consider the effect of the interim and permanent agreements between member employers and Local 3 cannot be squared with the teaching of Bonanno.

The court of appeals has misapplied this Court's decision in Bonanno. This Court stated that "where the union, not content with [true] interim agreements that expire with the execution of a unit wide contract, executes separate agreements that will survive unit-wide negotiations, the union has so 'effectively fragmented and destroyed the integrity of the bargaining unit' . . . as to create a 'unusual circumstance' under Retail Associates rules." 454 U.S. at 414-415.[13] True interim agreements, on

---

[13] The Court was referring to Retail Associates, Inc., 120 N.L.R.B. 388 (1958), in which the NLRB announced new rules governing an employer's withdrawal from multiemployer bargaining units, "reflecting an increasing emphasis on the stability of multiemployer units . . . ." 454 U.S. at 410.

balance, would "reserve a continuing material interest by all employer members in a final association-wide contract" by giving signers "an equivalent stake in final outcome" of multiemployer bargaining, id. at 415-416, the Court majority wrote. Interest in unit stability, the Bonanno majority said, must accommodate such agreements. The agreements, however, must be consistent with "the duty to abide by the results of group bargaining." Id. at 416; Brown v. Pro Football, Inc., 518 U.S. at 245.

The agreements here did not satisfy these standards. At a minimum, four agreements were facially permanent and at least two others had accompanying memoranda which also improperly prescribed terms that would survive a permanent UECA-Local 3 agreement. Even those agreements which more closely appeared to be "interim" in nature caused signatory employees to abandon interest in a final UECA agreement. The intended and practical effect of these agreements invariably was to cause UECA a loss of support. That loss was significant. It fragmented the unit. While the ALJ considered only the number of employers who signed such agreements — and concluded it was insufficient to warrant a finding of fragmentation — he ignored the size of these employers and the significance of their loss to the Association. Connell Typesetting Co., 212 N.L.R.B. 918 (1974), relied on by the ALJ (Appendix at 139a – 140a), does not mandate such a blinkered perspective.[14] When consideration also is

---

[14] The decision in Connell in fact was based in part on the number of employees employed by the remaining unit employers. See Connell Typesetting Co., 212 N.L.R.B. at 921.

given to the 14 other employers who signed interim agreements causing them to abandon interest in an Association contract, a proper reading of Connell and of Bonanno[15] supports UECA's position in this case.[16]

The four dissenting Justices' arguments in Bonanno would sustain UECA's arguments here. They criticized the majority opinion for "perpetuat[ing] an unsupportable balance [of economic weapons], and, in doing so, 'damag[ing] the very multiemployer bargaining mechanism it seeks to protect . . . . " Id. at 420 (Burger, C.J. and Rehnquist, J., dissenting). "By allowing the union to negotiate interim agreements in order to whipsaw the employer group, and yet denying the employers the necessary defense of withdrawal, the Board is hardly living up to its asserted —and mandated —

---

[15] The court of appeals in Bonanno, in a decision which this Court affirmed, noted that "unusual circumstances" warranting withdrawal from association bargaining "might arise even here if interim agreements are negotiated on such a scale or on such terms as to evidence an intention on the union's part to fragment the bargaining unit." N.L.R.B. v. Charles D. Bonanno Linen Serv., Inc., 630 F.2d 25, 24 n.17 (1st Cir. 1980), citing, inter alia, Connell Typesetting Co.

[16] Joseph J. Collier, et al., d/b/a Collier's Custom Kitchens, 243 N.L.R.B. 1114 (1979), enforced on other grounds, 630 F.2d 595 (8th Cir. 1980), on which the court of appeals relied, sought to distinguish Connell Typesetting and Typographic Services on grounds that the interim agreements in Collier were substantially uniform and not final. Id. at 1117. As we have shown, however, the interim agreements in a number of cases were otherwise. Moreover, here, in contrast to Collier, no multiemployer contract ever was reached much less signed by all other Association members. See id. Accordingly, Collier does not diminish the force of UECA's arguments.

commitment to evenhandedness. Id. at 423.[17] Justices O'Connor and Powell, also dissenting, agreed with these views. Id. at 427. They noted that interim agreements are likely to give employer signatories "a competitive advantage sufficient to produce a material and powerful interest in prolonging the [multiemployer negotiation] deadlock" and make a signatory "less likely to push for prompt settlement of the labor dispute." Id. at 430.

The dissenters' arguments resonate in this case. If, as was the case here, the effect of the disputed agreements was to prevent UECA from fulfilling its right as representative to conduct bargaining on behalf of all employer members, it was sufficient to warrant UECA's withdrawal from multiemployer bargaining. Cf. N.L.R.B. v. D.A. Nolt, 406 F.3d 200 (3d. Cir. 2005), petition for panel to hearing granted, 412 F.3d 477 (3d Cir. 2005) (correcting judgment to enforce uncontested portions of Board order) (effect of agreement between union

---

[17] The Chief Justice and Justice Rehnquist further argued that, contrary to the majority's assumption, under Board law, the execution of individual permanent agreements by employer members might not necessarily permit removing employer members to withdraw from the unit, citing Tobey Fine Papers of Kansas City, 245 N.L.R.B. 1393, 1395 (1979), enforced, 699 F.2d 841, 107 L.R.R.M. 2221 (8th Cir. 1981) (Board did not permit an employer to withdraw from a multiemployer group even though 2 of 14 members [representing 42% of the group's employees] had withdrawn with union consent and negotiated separate permanent agreements, holding this did not prove an intention to destroy or necessarily cause the fragmentation of a multiemployer unit.) Id. at 424 n. 4. (Justices O'Connor and Powell did not join in this portion of their colleagues' dissent.)

and employer association to conduct negotiations secretly deprived member employer of right to withdraw and so justified untimely withdrawal).

Whether an "interim" agreement is permissible as a matter of law merely because it purports to expire upon execution of a multiemployer unit contract[18] -- even though its provisions thrust the employer into another multiemployer association agreement with benefit plans and other terms so entangling that the signatory no longer has "an equivalent stake" in the outcome of its own multiemployer negotiations — is a matter that should be resolved by the Supreme Court. This is particularly true in view of the sharply divided Court that decided Bonanno. Permanent agreements of the kind present here can only add to the vexation of multiemployer bargaining representations caused by members individual dealings with a union. If Bonanno dictates that "the ability of multiple employers to act through a single representative ... depends entirely on the whim of the union," Retlaw Broad. Co. v. N.L.R.B., 172 F.3d 660, 668 (9th Cir. 1999), it is time for this Court to reexamine its consequences.

---

[18] We have noted, however, that several of the agreements by their terms were not temporary and others were accompanied by memoranda that expressly were to apply after a UECA-Local 3 agreement became effective.

CONCLUSION

WHEREFORE, for the foregoing reasons, this petition for a writ of certiorari should be granted.

ROGER SAMUEL KAPLAN
Counsel of Record
STEVEN S. GOODMAN
CHRISTOPHER M. VALENTINO
JACKSON LEWIS LLP
58 South Service Road, Suite 410
Melville, New York 11747
Tel.: (631) 247-0404

February 20, 2008

TABLE OF CONTENTS
Appendix to Petition

Page

Opinion of the
United States Court of Appeals for the
District of Columbia Circuit
entered November 27, 2007 .....1a

Decision and Order of the
National Labor Relations Board
(347 NLRB No. 1)
entered May 15, 2006.....5a

Decision and Order of the
National Labor Relations Board
(347 NLRB No. 2)
entered May 15, 2006.....91a

[ENTERED: NOVEMBER 27, 2007]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-1198 **September Term, 2007**
FILED ON: NOVEMBER 27, 2007

[1082519]
UNITED ELECTRICAL CONTRACTORS ASSOCIATION, ET AL.,

PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT

Consolidated with 07-1075

On Petition for Review and Cross-Application for Enforcement of an Order of the National Labor Relations Board

---

Before: SENTELLE, RANDOLPH AND KAVANAUGH, *Circuit Judges.*

JUDGMENT

This petition for review and cross-application for enforcement were considered on the record from the National Labor Relations Board and on the briefs and arguments of the parties. It is

ORDERED AND ADJUDGED that the petition for review be denied and the Board's cross-application for enforcement be granted.

Petitioner United Electrical Contractors Association (United) disputes the Board's finding that it unlawfully withdrew from multiemployer bargaining with Local Union No. 3, International Brotherhood of Electrical Workers (Union), and asserts that the Board did not act within its remedial power when it issued a bargaining order.

After negotiations began, United could withdraw form multiemployer bargaining only by "mutual consent" or if "unusual circumstances exist[ed]." *Retail Assocs., Inc.*, 120 N.L.R.B. 388, 395 (1958). The parties agree there was no mutual consent. United alleges two unusual circumstances worth addressing: (1) the Union bargained in bad faith, and (2) the Union fragmented the bargaining unit.

Substantial evidence supports the administrative law judge's finding that the Union did not negotiate in bad faith. The parties only need to bargain with the intention of reaching an agreement, *NLRB v. Ins. Agents' Int'l Union*, 361 U.S. 477, 488 (1960), and this court gives deference

to the Board's determination, which is "largely a matter for the Board's expertise." *NLRB v. Cauthorne*, 691 F.2d 1023, 1026 n.5 (D.C. Cir. 1982).

United argues that interim agreements between the Union and individual employers within United fragmented the bargaining unit. The record supports the administrative law judge's finding that these interim agreements did not enable United to withdraw from bargaining. The vast majority of the interim agreements were temporary - they would be superseded by a contract reached by United and the Union. *Charles D. Bonanno Linen Serv., Inc. v. NLRB*, 454 U.S. 404, 414-15 (1982). Further, the interim agreements did not dissipate United to the point that multiemployer bargaining was not viable. *Callier's Custom Kitchen*, 243 N.L.R.B. 1114, 1117 (1979) (finding no fragmentation when 40 of 65 employers signed interim agreements).

United waived the argument that the bargaining order adversely affected its employees' § 7 rights. *Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 666 (1982)("[T]he Court of Appeals lacks jurisdiction to review objections that were not urged before the Board."). While United did except generally to the remedy of the bargaining order, its exception was not sufficiently particular to preserve the challenge. *Scepter, Inc. v. NLRB*, 280 F.3d 1053, 1057 (D.C. Cir. 2002)(noting that because the party "failed to raise a particularized challenge to the bargaining order before the Board, this court has no authority to address the issue").

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk

[ENTERED: MAY 15, 2006]

347 NLRB No. 1

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual employer-members (See Appendix A) ***and*** **Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO.**

Eaton Electric, Inc., Raymour Electrical Co.,* Schneider Electric Co., Star Brite Electric Co., Blake Electrical Contracting, Inc., J.K. Electric Corp., T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Mondl Electric Co., Inc., Paul Mock, Inc., Star Electric Corp. ***and*** **Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO.** Cases 29–CA–18784, 29–CA–21456–5, 29–CA–21456–14, 29–CA–21456–15, 29–CA–21456–17, 29–CA–21456–27, 29–CA–21456–43, 29–CA–21456–48/49, 29–CA– 21456–50, 29–CA–21456–57, and 29–CA–21456–64

---

* We have amended the caption to reflect the correct spelling of this Respondent's name.

May 15, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On September 7, 2001, Administrative Law Judge Steven Davis issued the attached decision. Respondent United Electrical Contractors Association (UECA), Respondent Expert Electric, Inc. (Expert), Respondent Positive Electric Association, Inc. (Positive), and the General Counsel each filed exceptions to the judge's decision. Respondents UECA and Expert filed supporting briefs, and Respondent UECA filed a brief in answer to the General Counsel's exceptions.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and

---

[1] UECA's exceptions and briefs were filed on its own behalf and on behalf of certain of its employer-members.

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

conclusions as modified herein and to adopt the recommended Order as modified and set forth in full below.[3]

The Respondents herein are a multiemployer association (UECA) and 50 of its employer-members.[4] The judge found that the Respondents failed to provide and delayed in providing necessary and relevant information requested by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO (the Union), in violation of Section 8(a)(5). In so finding, the judge rejected the Respondents' procedural defenses to the 8(a)(5) allegations in Case 29–CA–18784. The judge further recommended a 12-month remedial extension of the certification year pursuant to *Mar-Jac Poultry*, supra. The Respondents except to the judge's unfair

---

[3] We amend the judge's remedy to reflect our finding, explained below, that a remedial extension of the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962), is unwarranted in this case. We have modified the judge's recommended Order to conform to the amended remedy and our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997), to more accurately reflect the violations alleged and found, and to require posting of the notice at UECA's most recent location in Holbrook, New York. Finally, we have substituted new notices to comport with these modifications and with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

[4] Forty-nine employer-members of UECA are named as Respondents in Case 29–CA–18784. See appendix A. Nine of these 49 are also named as Respondents in the remaining consolidated cases, along with 1 additional employer-member of UECA (Blake Electrical Contracting, Inc.).

labor practice findings,[5] as well as his findings with regard to the Respondents' procedural defenses and his imposition of a *Mar-Jac* remedy. For the reasons explained by the judge, except as modified below, we affirm the judge's unfair labor practice findings and his rejection of the Respondents' procedural defenses. However, as explained below, we do not find that a *Mar-Jac* remedy is appropriate in the circumstances presented here.

1. The Respondents argued, both to the judge and in earlier motions to dismiss and for summary judgment, that the complaint in Case 29–CA–18784 should be dismissed as against the individual employer-members of UECA because they were not served with the underlying charge within the 6-month limitations period set forth in Section 10(b) of the Act. The judge agreed with the Respondents that the evidence did not reflect service of the charge on the employer-members of UECA.[6]

---

[5] However, there are no exceptions to the judge's finding, in Case 29–CA–18784, that UECA unlawfully failed to provide *any* information on behalf of Respondents DiFrancia Electric, Inc., Farica Electric Contracting Corp., G & R Electrical Contracting, Inc., Lesil Reliable Electric Co., Inc., Lisa Electric a/k/a YNR Electric, Maximum Electrical Contracting, Inc., Milad Contracting Corp., T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Mondl Electric Co., Inc., Norlin Electrical Contracting Co., Pantel Contracting Corp., T & A Electrical Contracting, Tri-Town Electric Corp., and W. T. Hickey Corp.

[6] The General Counsel excepted to this finding, arguing that all of UECA's employer-members were served with the charge. Certified mail return receipts in the record reflect that the charge was served in January 1995 on all of the individual employer-Respondents before the Board in this case, except for

However, he found that Section 10(b) was nonetheless satisfied by service of the complaint on all of the Respondents, including the named employer-members of UECA, within the 10(b) period. The Respondents except, arguing that the complaint was not served on all of the Respondent employer-members of UECA and that, even if the complaint was so served, it failed to put them on notice that the complaint allegations were being asserted against them and not solely against UECA.[7] The General Counsel, for his part, excepts to the judge's finding that the evidence did not establish service of the charge. For the reasons explained below, we affirm the judge's finding that Section 10(b) does not bar the complaint against the individual employer-members of UECA.

In December 1994, the Union filed a charge in Case 29–CA–18784 alleging that, from on or about September 21, 1994 through the date of the filing of the charge, "UECA and its 91 employer members" had unlawfully failed to provide certain information requested by the Union in violation of Section 8(a)(5). As UECA acknowledges in its brief, the charge named as the charged employer UECA and, via an appendix to the charge, 91 employer-members of UECA. The record evidence reflects that, on

---

two: Farica Electric Contracting Corp. and Maximum Electrical Contracting Corp.

[7] Although the caption of the original complaint in Case 29–CA–18784 named UECA "and its individual employer-members" as respondents, the body of the complaint alleged unfair labor practices solely against UECA as "the Respondent."

January 13, 1995, the charge was served by certified mail on Tap Electrical Contracting, whose offices were also the offices of UECA.

Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ." The Board has interpreted this language to require "personal service [of the charge] upon the person charged or his agent." *Sewanee Coal Operators Assn.*, 167 NLRB 172, 177 (1967). The charge at issue here, naming each of the employer-members of UECA, was served on their multiemployer bargaining agent less than 4 months after the alleged unfair labor practice occurred—well within the 10(b) period. We find that this timely service on UECA constituted timely service on its employer-members also.[8]

Under agency law as well as the Federal Rules of Civil Procedure, service of process on an

---

[8] Member Schaumber finds it unnecessary to reach the issue of whether service on a multiemployer bargaining agent constitutes service on its employer-members, as he finds that the record shows that each of the employer-members is properly a respondent. The General Counsel provided evidence that the charge was served on all employermembers except Farica Electric Contracting Corp. and Maximum Electrical Contracting Corp. The failure of service of the charge was cured, with respect to Maximum Electrical Contracting Corp., by service of the complaint within the 10(b) period. Although Farica Electric Contracting Corp. was not properly served, it acknowledged by letter in October 2000 that it was a member of UECA and was bound by the certification.

authorized agent constitutes effective service on the agent's principal. Restatement (Second) of Agency §268 (1958); Fed.R.Civ.P. 4(h)(1). Authorization to accept service on behalf of a principal may be implied from the surrounding circumstances. See *Focus Media, Inc. v. Pringle*, 387 F.3d 1077, 1081–1083 (9th Cir. 2004). Also, under traditional rules of agency law, an agent is deemed to have authority to perform acts incidental to those expressly authorized by the principal. Restatement (Second) of Agency §35. Here, UECA had implied authority to accept service of the charge on behalf of its members because the allegations in the charge directly related to UECA's expressly authorized activities as the employermembers' bargaining agent. We accordingly find that in accepting service of the charge within the 10(b) period, UECA did so not only for itself but also for its employermembers named in the charge.[9] We accordingly affirm the judge's finding that Section 10(b) does not bar the complaint against the individual employer-members of UECA named therein.[10]

---

[9] In finding that UECA could accept service of the charge on behalf of its employer-members, we emphasize that those employer-members were named in the charge served on UECA. That fact distinguishes this case from *Expert Electric, Inc.*, 347 NLRB No. 2 (2006), which we also issue today. In that case, we found that service of a charge on UECA did not constitute effective service on UECA's employermembers because the charge did not name the employer-members as charged parties. Thus, UECA's authority to accept service of the charge on behalf of its members simply was not invoked in *Expert Electric* because the charge served on UECA named UECA alone.

[10] Member Walsh would find that the 10(b) defense as applied to two of UECA's employer-members, Farica Electric and Maximum Electrical, fails for an additional reason. The

2. The Respondents argued to the judge that the complaint against the employer-members of UECA in Case 29–CA–18784 should be barred under the doctrine of laches. In making this argument, the Respondents relied on the fact that the General Counsel did not specifically name any employer-members of UECA as respondents in this case until nearly 5-1/2 years after the complaint first issued. The judge rejected the Respondents' laches defense, noting that the doctrine of laches is generally inapplicable to Board proceedings and finding, at any rate, that the Respondents had not shown that they were prejudiced by the General Counsel's lack of diligence. The Respondents except. Although we agree with the Respondents that the General Counsel's delay was inordinate and inexcusable, for the reasons stated by the judge, we nevertheless agree with his finding that the Respondents were not prejudiced thereby. As the judge observed, several parties possessed evidence as to what information had been furnished to the Union. Further, the Respondents have not claimed this delay has resulted in the spoliation of evidence or has hampered their defense in any way. Thus, we adopt the judge's finding that the complaint is not

---

10(b) statute of limitations is an affirmative defense, which is deemed waived if not timely raised. *Paul Mueller Co.*, 337 NLRB 764, 764 (2002). Neither Farica Electric nor Maximum Electrical timely asserted its 10(b) defense by raising it either in an answer to the amended complaint or at the hearing. Furthermore, they are not among the employer-members represented by UECA in this proceeding and therefore cannot benefit by UECA's timely assertion of the 10(b) defense. Accordingly, Member Walsh would find that Farica Electric and Maximum Electrical have waived their 10(b) defense.

barred under the doctrine of laches. See *Roofing, Metal & Heating Associates*, 304 NLRB 155, 160 (1991).

3. Respondent Positive excepts to the finding that it unlawfully failed to provide information, through UECA, in Case 29–CA–18784. Positive maintains that UECA lacked authority to furnish information on its behalf because Positive had entered into an interim agreement with the Union. Positive does not dispute that the Union's September 21, 1994 information request asked for information concerning the employees of each of UECA's 91 employer-members. Positive also does not dispute that it was listed as one of those 91 employermembers at the time the Board certified the Union as the collective-bargaining representative of a multiemployer unit of employees employed by UECA's members. It does not contend that the nature of its interim agreement with the Union was such as to fragment the multiemployer unit. Neither does it contend that it ever withdrew from the multiemployer unit, either before multiemployer bargaining began or, under unusual circumstances, after the commencement of bargaining. See *Retail Associates, Inc.*, 120 NLRB 388, 395 (1958). Accordingly, we see no basis upon which to release Positive from liability in this case.

4. The judge found that UECA and certain of its members unlawfully delayed in providing information requested by the Union on September 21, 1994, in violation of Section 8(a)(5). In so finding, the judge rejected UECA's argument that it made diligent efforts to procure the requested information

from its members shortly after receiving the Union's request. We agree with the judge in this regard. In its September 21 request, the Union asked for the names, addresses, and telephone numbers of all unit employees, including former employees on temporary layoff and awaiting reemployment. UECA made its first written attempt to secure the requested information by letter dated December 2, 1994, in which UECA asked the employer-members to provide it "a list of workers—your payroll for September 2, 1994." Thus, we affirm the judge's unfair labor practice finding based on the fact that (1) UECA did not make a written request for information from its employer-members until more than 2 months after the Union had submitted its information request to UECA, and (2) even in this belated written request to its members, UECA failed to convey the Union's information request in a complete and accurate way.[11] Under these circumstances, we find that UECA did not make "a reasonable good-faith effort to respond to the request as promptly as circumstances allow[ed]." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993).

5. The judge found that the Respondents' refusal and failure to provide all of the information requested by the Union, beginning 1 month before

---

[11] In affirming the 8(a)(5) finding, we do not rely on the judge's finding that UECA President Anthony Cardillo did not credibly testify concerning the date on which he first orally sought information from UECA's employer-members in response to the Union's information request. Nor do we rely on the judge's finding that an exercise of reasonable diligence by UECA would have required the filing of a lawsuit against noncomplying members to secure the requested information.

collective bargaining began and continuing through the cessation of bargaining approximately 4 years later, warranted a 12-month extension of the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962). The Respondents except, and we find merit in the exception.

We recognize that refusals to furnish information have been found to warrant an extension of the certification year. See, e.g., *Wells Fargo Armored Services Corp.*, 322 NLRB 616 (1996); *Valley Inventory Service*, 295 NLRB 1163 (1989). The duration of such an extension depends, however, on the circumstances of the individual case. In fashioning an appropriate remedy, the Board's task is to provide "a reasonable period of time" for bargaining "without unduly saddling the employees with a bargaining representative that they may no longer wish to have represent them." *Wells Fargo Armored Services*, supra at 617 (internal quotations omitted). Various factors inform our exercise of discretion in this regard, see id., but we find several considerations dispositive here. First, the unlawful conduct was a refusal to give information, not a withdrawal of recognition or coercive conduct directed to employees. Although the Board has the authority to extend somewhat the certification year for such a violation, it is not required to do so, i.e., it exercises remedial discretion.[12] Second, more than 11 years have passed since the certification. During an extension of the certification year, employees are unable to exercise their Section 7 right to oust or

---

[12] In any event, neither *Wells Fargo* nor *Valley Inventory* grants the *12-month* extension sought by our colleague.

change their representative. Given the time period involved, we believe that employees should be given that Section 7 right after a reasonable period of time during which the effects of the "information" violation can be remedied.[13] Thus, for this reasonable time period, the Union will be secured against decertification efforts and rival petitions. Under these circumstances, we find a full-year *Mar-Jac* remedy in this case unwarranted.[14]

---

[13] In the related case of *Expert Electric*, supra, which we also issue today, we order UECA, inter alia, to bargain with the Union for a reasonable period of time. See, e.g., *Federal Pacific Electric Co.*, 215 NLRB 861 (1974).

[14] Member Walsh would adopt the judge's recommendation to extend the certification year pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962). As the majority acknowledges, the Board has granted such a remedy for 8(a)(5) refusals to furnish requested information, so the only real question is how much of an extension to grant. The factors relevant to that decision include the nature of the violations, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations. *Northwest Graphics, Inc.*, 342 NLRB No. 127, slip op. at 2 (2004). Applying these factors, the violation here is that the Respondents withheld from the Union the most basic of all information concerning unit employees, namely, their names, addresses, and telephone numbers. The impact of the violation was that the Union was prevented from ascertaining the wishes of the very employees on whose behalf it was bargaining. As to the Union's conduct, in the related case of *Expert Electric*, 347 NLRB No. 2 (2006), the Board rejects UECA's contention that the Union engaged in bad-faith bargaining. Finally, although more than 50 bargaining sessions took place over approximately 4 years, the Respondents never fully supplied the requested information, so there was not a single session at which the Union had the information it needed to fully represent the unit employees. In other words, the Union was effectively deprived of its entire certification

6. The General Counsel has requested, inter alia, that we order mailing of the notice to all of the unit employees. The General Counsel maintains that posting of the notice at UECA's office is not a sufficient remedy given that UECA does not employ any of the unit employees and few, if any, of the employees have occasion to visit UECA's office. The General Counsel further maintains that posting the notice at the offices of the various Respondent employer-members would similarly be inadequate as a remedy because, due to the nature of their work, the unit employees do not regularly report to their employers' offices. UECA opposes the General Counsel's notice-mailing request, arguing that such a remedy would impose an unreasonable burden on UECA. We agree with UECA.

Board remedies must be "adapted to the situation which calls for redress." *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 348 (1938). Thus, Board remedies should take into account practical considerations relating to the parties involved. Here, a noticemailing requirement would require UECA to gather the names and addresses of all former unit employees employed by its numerous employer-members at any time since the date of the first unfair labor practice in this case, which is more than 11 years ago. Under the unusual circumstances of this case, we find a noticemailing requirement to be unduly burdensome. Therefore, we shall provide for the traditional notice-posting remedy. We also

---

year. Under these circumstances, Member Walsh agrees with the judge that a full 12-month extension of the certification year is proper.

note that nothing precludes the Union from posting copies of the attached notices at the union hall.[15]

ORDER

A. The National Labor Relations Board orders that the Respondent, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide and delaying in providing Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO (the Union) with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

---

[15] Member Walsh would modify the judge's recommended Order as requested by the General Counsel. In his view, the General Counsel's notice-mailing request is based on the realistic assessment that the unit employees are not likely to see posted notices given that they work in the construction industry. The practical difficulties the majority cites can be worked out between the Respondents and the Region or addressed, if need be, at a compliance proceeding. That the Union may, if it wishes, post copies of the notices at its hiring hall is not an equitable alternative. The Respondents are the wrongdoers here, not the Union.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent that such information has not been provided already, timely provide the Union with the requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

(b) Within 14 days after service by the Region, post at its Holbrook, New York facility, copies of the attached notice marked "Appendix B."[16] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 21, 1994.

---

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting
to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, and (a) DiFrancia Electric, Inc., Farmingdale, New York, (b) Farica Electric Contracting Corp., New York, New York, (c) G & R Electrical Contracting, Inc., Brooklyn, New York, (d) Lesil Reliable Electric Co., Inc., New York, New York, (e) Lisa Electric, Inc. a/k/a YNR Electric, Brooklyn, New York, (f) Maximum Electrical Contracting, Inc., Astoria, New York, (g) Milad Contracting Corp., Woodside, New York, (h) T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Brooklyn, New York, (i) Mondl Electric Co., Inc., New York, New York, (j) Norlin Electrical Contracting Co., New York, New York, (k) Pantel Contracting Corp., Hopewell Junction, New York, (l) Positive Electric Association, Inc., Long Island City, New York, (m) T & A Electrical Contracting, Brooklyn, New York, (n) Tri-Town Electric Corp., Wantagh, New York, (o) and W. T. Hickey Corp., Huntington Station, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union with the requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of the attached notice marked "Appendix C."[17] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are

---

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facility involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting
to the steps that each Respondent has taken to comply.

C. The National Labor Relations Board orders that the Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, and (a) Action Electrical Contracting Corp., Astoria, New York, (b) C. B. Electrical, Bayonne, New Jersey, (c) Eugene Iovine, Inc., East Farmingdale, New York, (d) Expert Electric, Inc., Astoria, New York, (e) Falcone Electric Corp., Brooklyn, New York, (f) Ferrara Electrical Controls, Richmond Hill, New York, (g) Global Electrical Contracting, Yonkers, New York, (h) Granna Electric, Rosedale, New York, (i) Kew Electric Co., Brooklyn, New York, and (j) Star Brite Electric Co., Flushing, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying in providing the information requested by the Union on September 21, 1994, including the requested telephone numbers of unit employees, but excluding employee social security numbers.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union the information it requested on September 21, 1994, including the requested telephone numbers of unit employees, but excluding employee social security numbers.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of the attached notice marked "Appendix D."[18] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained

---

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facility involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent has taken to comply.

D. The National Labor Relations Board orders that the Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, Holbrook, New York, and (a) Alco Electric Co., Bronx, New York, (b) Atlas Electrical Contractors, Inc., Richmond Hill, New York, (c) Bisantz Electric Co., Inc., Jamaica, New York, (d) County Wide Electric, Queens Village, New York, (e) DeCeck & Leonard, Inc., New York, New York, (f) Eaton Electric, Inc., Yonkers, New York, (g) Gilston Electrical Contracting Corp., New York, New York, (h) J. K. Electric Corp., North Babylon, New York, (i) Lipco Electric Co., Maspeth, New York, (j) Lobello Electrical Installation, Bronx, New York, (k) M.P.E. Electrical Contracting Corp. d/b/a Star

Electric Corp., New York, New York, (l) Paul Mock, Inc., New York, New York, (m) Raymour Electric Co., Jamaica, New York, (n) Schneider Electric Co., Inc., New York, New York, (o) Square Electric Co., Inc., Bronx, New York, (p) T & J Electrical Contractors, Glendale, New York, (q) Tap Electrical Contractors Service, Inc., Holbrook, New York, (r) V & R Electrical Contractors, Inc., College Point, New York, (s) Vintage Electric Corp., Brooklyn, New York, and (t) Cotroneo & Marino's United Electric Co., Inc., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying in providing complete listings of unit employees' telephone numbers in response to the Union's request for this information.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union with complete listings of unit employees' telephone numbers in response to the Union's request for this information.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of the

attached notice marked "Appendix E."[19] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facility involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting
to the steps that each Respondent has taken to comply.

E. The National Labor Relations Board orders that the Respondents, (a) Blake Electrical Contracting, Inc., Bronx, New York, (b) Eaton

---

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Electric, Inc., Yonkers, New York, (c) J. K. Electric Corp., North Babylon, New York, (d) Mondl Electric Co., Inc., New York, New York, (e) Paul Mock, Inc., New York, New York, (f) Raymour Electric, Inc., Jamaica, New York, (g) Schneider Electric Co., New York, New York, (h) M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp., New York, New York, (i) Star Brite Electric Co., Flushing, New York, and (j) T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp., Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with monthly remittance reports, for the period from May through October 1997, for the Local 363, International Brotherhood of Teamsters (IBT Local 363) Pension Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely provide the Union with monthly remittance reports, for the period from May through October 1997, for the IBT Local 363 Pension Fund.

(b) Within 14 days after service by the Region, post at their facilities listed above, copies of

the attached notice marked "Appendix F."[20] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' respective authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any Respondent has gone out of business or closed the facility involved in these proceedings, that Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by that Respondent at any time since October 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that each Respondent has taken to comply.

Dated, Washington, D.C. May 15, 2006

_____

Robert J. Battista, Chairman

---

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Action Electrical Contracting Corp.
Alco Electric Co. Atlas Electrical Contractors, Inc.
Bisantz Electric Co., Inc.
Bran Electric Corp.
C. B. Electrical
C & L Electric, Inc.
Cotroneo & Marino's United Electric Co., Inc.
County Wide Electric
DeCeck & Leonard, Inc.
DiFrancia Electric, Inc.
Eaton Electric, Inc.
Eugene Iovine, Inc.
Expert Electric, Inc.
Falcone Electric Corp.
Farica Electric Contracting Corp.
Ferrara Electrical Controls
G & R Electrical Contracting, Inc.
Gilston Electrical Contracting Corp.
Global Electrical Contracting
Granna Electric
Heller Electric Co., Inc.
Interphase Electrical Corp.
J. K. Electric Corp.
Kew Electric Co.
Lesil Reliable Electric Co., Inc.
Lipco Electric Co.

Lisa Electric, Inc. a/k/a YNR Electric, Inc.
Lobello Electrical Installation
M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp.
Maximum Electrical Contracting Corp.
Milad Contracting Corp.
Mondl Electric Co., Inc.
Norlin Electrical Contracting Co.
Pantel Contracting Corp.
Paul Mock, Inc.
Positive Electric Association, Inc.
Raymour Electrical Co.
Schneider Electric Co., Inc.
Square Electric Co., Inc.
Star Brite Electric Co.
T & A Electrical Contracting
T & J Electrical Contracting
T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp.
Tap Electrical Contractors Service, Inc.
Tri-Town Electric Corp.
V & R Electrical Contractors, Inc.
Vintage Electric Corp.
W.T. Hickey Corp.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to provide or delay in providing Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO (the Union) with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with the requested names, addresses, telephone numbers, and job classifications of unit employees that have not been provided already, including former employees on temporary layoff.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to provide the Union with requested names, addresses, telephone numbers, and job classifications of unit employees, including former employees on temporary layoff.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with the requested names, addresses, telephone numbers,

and job classifications of unit employees, including former employees on temporary layoff.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND DIFRANCIA ELECTRIC, INC., FARICA ELECTRIC CONTRACTING CORP., G & R ELECTRICAL CONTRACTING, INC., LESIL RELIABLE ELECTRIC CO., INC., LISA ELECTRIC, INC. A/K/A YNR ELECTRIC, MAXIMUM ELECTRICAL CONTRACTING, INC., MILAD CONTRACTING CORP., T. REILLY ELECTRICAL CORP., F/K/A MODICA & REILLY ELECTRIC CORP., MONDL ELECTRIC CO., INC., NORLIN ELECTRICAL CONTRACTING CO., PANTEL CONTRACTING CORP., POSITIVE ELECTRIC ASSOCIATION, INC., T & A ELECTRICAL CONTRACTING, TRI-TOWN ELECTRIC CORP., AND W.T. HICKEY CORP.

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT delay in providing the information requested by the Union on September 21, 1994, including the requested telephone numbers of unit employees but excluding employees social security numbers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union the information it requested on September 21, 1994, including the requested telephone numbers of unit employees, but excluding employee social security numbers.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND ACTION ELECTRICAL CONTRACTING CORP., C. B. ELECTRICAL, EUGENE IOVINE, INC.,

EXPERT ELECTRIC, INC., FALCONE ELECTRIC CORP., FERRARA ELECTRICAL CONTROLS, GLOBAL ELECTRICAL CONTRACTING, GRANNA ELECTRIC, KEW ELECTRIC CO., AND STAR BRITE ELECTRIC CO.

APPENDIX E

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT delay in providing complete listings of employees' telephone numbers in response to the Union's request for this information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with complete listings of unit employees' telephone numbers in response to the Union's request for this information.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND ALCO ELECTRIC CO., ATLAS ELECTRICAL CONTRACTORS, INC., BISANTZ ELECTRIC CO., INC., COUNTY WIDE ELECTRIC, DECECK & LEONARD, INC., EATON ELECTRIC, INC., GILSTON ELECTRICAL CONTRACTING CORP., J. K. ELECTRIC CORP., LIPCO ELECTRIC CO., LOBELLO ELECTRICAL INSTALLATION, M.P.E. ELECTRICAL CONTRACTING CORP. D/B/A STAR ELECTRIC CORP., PAUL MOCK, INC., RAYMOUR ELECTRIC CO., SCHNEIDER ELECTRIC CO., INC., SQUARE ELECTRIC CO., INC., T & J ELECTRICAL CONTRACTORS, TAP ELECTRICAL CONTRACTORS SERVICE, INC., V & R ELECTRICAL CONTRACTORS, INC., VINTAGE ELECTRIC CORP., AND COTRONEO & MARINO'S UNITED ELECTRIC CO., INC.

APPENDIX F

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to provide the Union with monthly remittance reports, for the period from May through October 1997, for the Local 363, International Brotherhood of Teamsters (IBT Local 363) Pension Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL timely provide the Union with monthly remittance reports, for the period from May through October 1997, for the IBT Local 363 Pension Fund.

BLAKE ELECTRICAL CONTRACTING, INC., EATON ELECTRIC, INC., J. K. ELECTRIC CORP., MONDL ELECTRIC CO., INC., PAUL MOCK, INC., RAYMOUR ELECTRIC, INC., SCHNEIDER ELECTRIC CO., M.P.E. ELECTRICAL CONTRACTING CORP. D/B/A STAR ELECTRIC CORP., STAR BRITE ELECTRIC CO., AND T. REILLY ELECTRICAL CORP. F/K/A MODICA & REILLY ELECTRIC CORP.

Elias Feuer, Esq., for the General Counsel.
Richard Brook and *Patricia Palmeri, Esqs.,* of Mineola, New York, for Local 3.
Steven Goodman and *Bonnie Parente, Esqs. (Jackson, Lewis, Schnitzler & Krupman, Esqs.),* of Woodbury, New York, for Respondent United Electrical Contractors Association and certain individual-employer members of the Association.
James Frank and *David Prager, Esqs. (Phillips Nizer Benjamin Krim & Ballon, LLP),* for Respondent Expert Electric.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. On February 23, 1993, Local 3 was certified by the Board following an election in which Local 3 received

more votes than Local 363, Teamsters, which had represented UECA's employees for approximately 20 years. The certified unit is as follows:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

On December 23, 1994, a charge was filed in Case No. 29-CA-18784 by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, (Local 3 or Union). The charged party was named as the United Electrical Contractors Association (UECA), a multiemployer association.

In the boxes in the charge form stating "Employer Representative" and "Address", the charge stated "See attached list". The attached list set forth the names and address of 91 companies which were allegedly served with a copy of the charge. UECA was not separately mailed a copy of the charge inasmuch as it did not have a separate office. However, Tap Electrical Contractors Service (Tap), whose president also served as president of UECA and whose business address functioned as the office of UECA, was also allegedly sent a copy of the charge. No return receipts evidencing service of the charge or affidavit of service of the charge were received in evidence. Respondents deny knowledge or information concerning the service of the charge.

However, the complaint, described below, was properly served. Affidavits of service and return receipts establishing service of the complaint were received in evidence.

The charge alleged essentially that since about September 21, 1994, UECA and the employer members of UECA have refused to provide information to Local 3. The charge states:

> Specifically, the UECA and its 91 employer members as set forth in the attached certification and list in Case No. 29–CA–7191, have failed to provide the names, addresses, telephone numbers, social security numbers and classifications of unit employees.[1]

On February 28, 1995, a complaint was issued in Case No. 29–CA–18784 against "United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual-employer members". The employer-members were not individually named in the complaint, which alleged that Local 3 requested that UECA furnish it with the following information:

> a) A list of the names, addresses, telephone numbers and job classifications of all employees in the certified bargaining unit. . . . and
>
> b) A list of all such employees who are currently on temporary layoff status.

---

[1] The case number is incorrect. It should refer to Case No. 29–RC–7191.

The complaint concedes that certain information was furnished but alleges that UECA (a) with respect to certain employers delayed furnishing certain of the requested information and (b) with respect to certain employers failed to furnish all of the information in violation of Section 8(a)(1) and (5) of the Act. The complaint was served by certified mail upon UECA at its office address at Tap's office, and upon 91 alleged employer-members of UECA. Affidavits of service and return receipts establish that service of the complaint was made upon the Respondents on February 28 and March 3, 1995.

Apparently, the complaint was not prosecuted until more than 5 years later when on June 16, 2000, an amended complaint was issued. The caption of the amended complaint read: "United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual-employer members (See Appendix)". The affidavits of service and return receipts establish that the 50 listed employer-members of UECA were served with the amended complaint. Thus, the amended complaint expressly named the individual-employer members as named Respondents unlike the original complaint which omitted such names. Aside from the addition of the employer-members' names, the amended complaint is substantively identical to the original complaint.

Answers to the amended complaint were filed by UECA in behalf of its employer-members, and by Expert Electric Co., Inc. (Expert), and by certain other respondents. The answers deny knowledge or information concerning the service of the charge.

Affidavits of service and return receipts establish that the amended complaint was properly served. The answers generally denied the material allegations of the amended complaint and asserted certain affirmative defenses which will be discussed below.

A motion to dismiss and a motion for summary judgment regarding Case No. 29–CA–18784 were filed with the Board. They alleged essentially that (a) a finding against the individual-employer members of UECA must be dismissed pursuant to Section 10(b) of the Act (b) the 5 year delay in amending the complaint to name the individual-employer members of UECA violated due process and notice requirements (c) UECA has been prejudiced by the failure to join the individual-employer members in the original complaint and (d) Expert provided the information requested to Local 3, and thereafter the Regional Office approved the withdrawal of a charge in Case No. 29–CA–21456–6 as to Expert prior to the issuance of the amended complaint. On September 5, 2000, the Board denied the motions on the grounds that they raise genuine issues of material fact which would better be resolved after a hearing before an administrative law judge. The matters raised in the motions are discussed herein. On October 19, 23 and 27, 2000, a hearing was held before me in New York, New York.

Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the briefs filed by counsel for the General Counsel, Local 3,

UECA, Expert, and Square Electric, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and UECA admits that it has been an organization composed of various employers engaged as electrical contractors in New York State, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations including Local 3.

The complaint also alleges and UECA admits that during the year ending December 31, 1994, the employer-members of UECA, collectively, in the course and conduct of their business operations, derived gross revenue from such operations in excess of $50,000, and purchased and received at their facilities, electrical products and other supplies and materials valued in excess of $500,000 directly from points outside New York State. UECA further admits that it and its employer-members have been employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

UECA denied that Local 3 is a statutory labor organization. Local 3 is a long- established union which has represented employees in the electrical industry for many years. It was certified as the representative of the unit employees here. I find that it is a labor organization within the meaning of Section 2(5) of the Act.

II. THE FACTS

A. Background

As set forth above, UECA refused to bargain with Local 3 in order to test the certification and on October 29, 1993, the Board granted the General Counsel's motion for summary judgment and directed that UECA bargain with *Local 3 UECA,* 312 NLRB 1118 (1993). On September 2, 1994, the Second Circuit Court of Appeals enforced the Board's bargaining order.

B. Case No. 29–CA–18784

1. The request for information concerning unit employees

On September 21, 1994, Local 3 sent the following letter to UECA's attorney, UECA, and 91 individual-employer members of UECA:

> In preparation for collective bargaining Local 3 requests that it be sent the names, addresses, telephone numbers and Social Security numbers of each employee of each of the 91 UECA employers that are covered by the 2nd Circuit's September 2nd Order and those former employees who are on temporary layoff and awaiting re-employment.

Although the Union's letter requested the social security numbers of employees, the complaints which issued in this case do not allege that Respondents violated the Act by refusing to furnish

the social security numbers of employees. Accordingly, no violation shall be found concerning the social security numbers.

On October 7, 1994, Anthony Cardillo, the president of UECA, wrote to UECA members advising them to attend a meeting on October 12. At that time, UECA had not been holding regular meetings, but it began holding monthly meetings thereafter. Cardillo testified that at the October 12 meeting he asked the contractors to supply the information requested by Local 3. He explained at hearing that UECA does not maintain and does not possess the information requested and must obtain it from its members. Following the October 12 meeting, he made general announcements requesting that the contractors supply the information requested, including the employees' classifications.

On October 14, UECA's attorney wrote to Local 3 advising that it was attempting to contact all the employers to which Local 3's September 21 letter was addressed. He further advised that when the information requested becomes available it will be provided, with the caveat that "some of the information you request appears to go beyond legal requirements."

Vincent McElroen, the business representative and negotiator for Local 3, testified that at the first bargaining session on October 24, Mr. McSpedon, the president of Local 3, requested the information set forth in the Union's September 21 letter and further asked that it include the employee's classification, and that each employee be

identified by the employing shop.[2] McElroen testified that Local 3 needed the information because (a) the unit employees were not accessible at their employers' place of business since they work at job sites at various locations and it sought to communicate with the unit members to solicit their views as to contract demands and because (b) it never had an accurate list of who was in the unit since no *Excelsior* list was provided prior to the election. McElroen testified that Andrew Peterson, UECA's attorney, responded that Local 3 was entitled to the information which would be provided when he received it. McElroen stated that he asked for the names of employees on layoff status because such employees are usually temporarily laid off while awaiting work from their former employer and are therefore part of the unit whose views as to negotiations were important. McElroen stated that Local 3 never received any information concerning former employees who were temporarily laid off and awaiting reemployment.

On October 3, November 10, November 18 and December 22, McElroen sent letters to UECA's counsel repeating Local 3's requests for the information set forth in the Union's September 21 letter.

On December 2, 1994, Cardillo sent a letter to contractors asking for a "list of workers—your payroll for September 2, 1994." Cardillo testified that this was the first letter sent by UECA to its

---

[2] UECA's notes of the October 24 session do not reflect that McSpedon asked that the list be broken down by shop.

members asking for information, although oral requests had been made as early as October 12.

McElroen testified that Local 3 first received information from UECA at the December 14 negotiation session.[3] The information provided was a list of 222 names and addresses of employees. McElroen protested that the list was not responsive to Local 3's request because the telephone numbers, social security numbers, layoff list, classifications, and identification of employee by employer were not included. McElroen also commented that the list could not have included all the unit employees since the tally of ballots at the election listed 780 eligible voters.

At the December 20 bargaining session an additional 88 names and addresses were turned over to Local 3. McElroen again complained that the list contained fewer names than expected, no phone numbers, no classifications and the list was not broken down by employer. According to McElroen, UECA attorney Steven Goodman said that he was not aware that the Union had requested employee classifications, but in any event he would "rework"

---

[3] I reject Expert's claim that such information was provided on October 19. I credit McElroen's testimony that he mistakenly wrote "October 19" on the list he received on December 14, but that he did not receive any of the requested information until December 14. It is unlikely that by October 19 the extensive list of names and addresses from various employers would have been sent to UECA and then transmitted to Local 3 even assuming that the contractors were informed at a meeting on October 12 that they had to provide such information.

the list so that it would contain classifications. Given the lack of documentary evidence supporting McElroen's alleged request for the classifications of employees prior to December, 1994, I cannot find that Local 3 requested such information at the October 24 negotiation session, or at any time prior to the December 20 session. Accordingly, I find that classifications of employees were first requested at the December 20 meeting.

Further, on January 5, 1995, a list containing 328 names and addresses was supplied which also set forth the employer's name. McElroen again protested that the list was incomplete.

On January 6, 1995, Cardillo sent a letter to contractors advising that "we are now required to obtain from you the social security numbers, classifications and telephone numbers" for employees on their payrolls on September 2, 1994.

On January 25, Local 3 received a list of 300 names and addresses of employees, with their classifications, and 111 phone numbers and employers' names. Only some of the contractors provided phone numbers for their employees. On February 8, a list containing 333 names and addresses, 333 classifications, 243 phone numbers and employers' names was received. Thereafter, on February 22, Local 3 was given a list incorporating 356 names, 356 classifications, 293 phone numbers and 38 employers.

On March 6, 1995, Cardillo advised the UECA contractors that "the NLRB is now asking for the

hourly rate of the electricians, along with information on any electricians that were on a temporary lay-off" for the payroll period of September 2, 1994. A list containing 431 names and addresses was given to Local 3 on March 23.

On April 5, UECA sent letters to employers which failed to provide some or all of the requested information asking that they do so.

On May 18, 1995, UECA advised its contractors that this was their "last chance to comply" with UECA's requests for information, and asked that they submit a list of employees who were on the payroll for the week of September 2, 1994.

The June 9, July 6 and August 1 lists turned over to Local 3 contained further information.

On August 3, 1995, UECA asked its contractors for the information regarding their employees for the week ending July 28, 1995 because of the amount of time taken in obtaining the information requested. On September 28, a list which contained 327 names was submitted to Local 3.

Information continued to be provided through lists turned over to Local 3 on January 10, June 12, and June 27, 1996, and May 14, 1997.

Each time information was provided to UECA, it promptly turned over such information to Local 3.

Cardillo testified that legal action has never been brought against an employer-member of UECA who had been providing information during negotiations. The by-laws of UECA provide that it is empowered to institute "legal proceedings, for the accomplishment of any purpose or enforcement of any rule or regulation . . . which may be recognized as proper and lawful objectives of the Association. . . ."

McElroen testified that during negotiations, he was told that UECA was experiencing difficulty in contacting the individualemployer members because some were out of business or moved and changed their phone numbers. McElroen suggested that UECA bring a lawsuit against its members to require them to submit the information, and also recommended that UECA obtain the current names and addresses of electrical contractors from the New York City Licensing Board. McElroen explained at hearing that anyone performing electrical work in New York City must have a license, a place of business in New York City and a current phone number. McElroen stated that when he asked UECA in 1995 if it contacted the Licensing Board he was told that UECA's method of contacting its members was none of his business. McElroen learned the correct names and addresses of UECA members though this method but could not recall if he shared that information with UECA.

2. The violations found

General Counsel seeks a finding against UECA and certain individual-employer members of UECA, as follows:

1. General Counsel argues, and the evidence establishes, that UECA did not submit any of the requested information for the following individual-employer members of UECA:

> (a) DiFrancia Electric, Inc. (b) Farica Electric Contracting Corp.[4] (c) G & R Electrical Contracting, Inc. (d) Lesil Reliable Electric Co., Inc. (e) Lisa Electric, Inc. a/k/a YNR Electric (f) Maximum Electrical Contracting, Inc. (g) Milad Contracting Corp. (h) Modica & Reilly Electric Corp. (i) Mondl Electric Co., Inc. (j) Norlin Electrical Contracting Co. (k) Pantel Contracting Corp. (l) Positive Electric Association, Inc. (m) T & A Electrical Contracting (n) Tri-Town Electric Corp. (o) and W.T. Hickey Corp.

2. General Counsel argues, and the evidence establishes, that UECA did not submit telephone numbers of employees employed by C & L Electric, Inc., and Heller Electric Co., Inc. However,

---

[4] UECA claims that Farica was never represented by it in negotiations and was not on the list of individual-employer members of UECA given to Local 3. However, on October 2, 2000, Farica acknowledged, by letter, that it was bound by the 1993 certification and that it was a member of UECA and represented by it in negotiations. I accordingly find that Farica is properly subject to an Order in this case.

as to C & L, various lists submitted by that employer stated that no employees were employed. No contrary evidence was adduced. According to the information supplied by Heller, which employed only 2 employees, Avraham Heller and Moshe Heller, I cannot find that the evidence establishes that they had telephone numbers to provide. I accordingly cannot find a violation based upon the failure by C & L and Heller to submit telephone numbers of their employees.

3. General Counsel argues, and the evidence establishes, that UECA delayed in furnishing complete information, which included the telephone numbers of unit employees employed by the following employer-members until January 25, 1995, four months after the initial request of Local 3:

> (a) C.B. Electrical (b) Eugene Iovine, Inc. (c) Expert Electric, Inc. (received by UECA on January 12 and transmitted by UECA to Local 3 on January 25. (d) Falcone Electric Corp. (e) Ferrara Electrical Controls (f) Global Electrical Contracting (g) Granna Electric (h) Kew Electric Co. and (i) Star Brite Electric Corp.

On January 25, Local 3 received a list of telephone numbers of employees in addition to the names, addresses, classifications of employees and the names of the shops they were employed by. Prior to January 25, telephone numbers had not been supplied.

4. General Counsel argues and the evidence establishes that UECA delayed in furnishing complete listings of phone numbers on behalf of the following employer-members. During the period February 8, 1995 to September 28, 1995 UECA submitted phone numbers for all the employees of the following employer-members:

> (a) Alco Electric Co. (b) Atlas Electrical Contractors, Inc. (c) Bisantz Electric Co., Inc. (d) County Wide Electric (e) De-Ceck & Leonard, Inc. (f) Eaton Electric, Inc. (g) Gilston Electrical Contracting Corp. (h) J.K. Electric Corp. (i) Lipco Electric Co. (j) Lobello Electrical Installation (k) M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp. (l) Paul Mock, Inc. (m) Raymour Electric Company (n) Schneider Electric Company, Inc. (o) Square Electric Co., Inc. (p) T & J Electrical Contractors (q) Tap Electrical Contractors Service, Inc. (r) V & R Electrical Contractors, Inc. (s) Vintage Electric Corp. and (t) Controneo & Marino's United Electric Co., Inc.[5]

With respect to the above, it bears repeating that no telephone numbers of any employees were

---

[5] General Counsel also alleged that UECA had delayed in furnishing telephone numbers for the employees of Action Electrical Contracting Corp. until the period February 8, 1995 through September 28, 1995. However, the list submitted on January 25, 1995 sets forth the phone numbers of all four of Action's employees. Accordingly, I have omitted Action from this list of the companies as to which submission of telephone numbers were delayed.

submitted by UECA until January 25, 1995 notwithstanding that Local 3 requested such information on September 21, 1994.

McElroen testified that Local 3 had not received for certain employers the names, addresses, telephone numbers and job classifications from the time requests for that information were made in letters dated October 31, 1997, December 26, 1997, January 9 and January 15, 1998 to March 19, 1998. However, no requests for such information were contained in those letters. Rather, the letters requested information concerning the monthly remittance reports. Accordingly, I do not place any reliance upon McElroen's testimony concerning alleged updated requests for such information.

C. Case No. 29–CA–21456 et al.

The Request for Remittance Reports

Charges were filed by Local 3 on September 30, 1997, alleging that certain employer-members of UECA refused to provide certain information to Local 3.

On March 19, 1998, a complaint was issued against 39 Respondents. The complaint alleges and Respondents admit that they performed services valued in excess of $50,000 for various enterprises and governmental entities in New York State, each of which enterprises, in turn, is directly engaged in interstate commerce and meets a Board standard for the assertion of jurisdiction, exclusive of indirect inflow or indirect outflow. The complaint alleges and

the answers admit that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. The answers to the complaint deny knowledge or information concerning the service of the charges but affidavits of service and return receipts establish that service of the charges was proper.

The complaint alleges and Respondents admit that since about April, 1996, the employer-members of UECA, including the Respondents, were required to make monetary contributions to the Building Trades Funds which were established by UECA pursuant to the terms of collective-bargaining agreements with Local 363, the predecessor collective-bargaining representative of the unit employees. The complaint further alleges and Respondents admit that on various dates from October 31, 1997 through January 15, 1998, Local 3 made written requests of UECA for the remittance reports submitted to the Building Trades Funds and to the Local 363 Pension Funds relating to the employees of UECA's employer-members. The complaint also alleges and Respondents admit that Local 3 orally requested UECA to have its employer-members furnish the names, addresses, telephone numbers and job classifications of their employees.

The complaint alleges and Respondents admit that information concerning the names, addresses, telephone numbers and job classifications is necessary for and relevant to Local 3's performance of its duties as the exclusive collective-bargaining representative of the employees of Respondents. The complaint also alleges, but Respondents deny, that

the remittance reports are necessary for and relevant to Local 3's performance of its representative duties. Finally, the complaint alleges, and Respondents deny, failing and refusing to furnish the requested information.

On October 31, 1997, Local 3 made a written request to the attorney for UECA for the following information:

> Copies of the monthly remittance reports for the months of May through October, 1997, submitted by each Employer to the Building Trades Benefit Plans and Local 363, IBT Pension Plan.

By letters dated December 26, 1997, January 9, 1998 and January 19, 1998, Local 3 renewed its request for the remittance reports.

On April 8, 1998, Building Trades Fund remittance reports for twenty employers were sent to Local 3.[6] However, the Local 363 IBT Pension Fund remittance reports were not submitted as requested.

McElroen testified without contradiction that through the date of this hearing, Local 3 had not been given remittance reports submitted to the Local 363 Pension Fund for the following employer-members of UECA:

---

[6] The twenty employers included Blake, Eaton, Paul Mock, Raymour, Schneider, Star Brite, and Star Electric.

(a) Blake Electric Contracting, Inc. (b) Eaton Electric, Inc. (c) J.K. Electric Corp. (d) Mondl Electric Co., Inc. (e) Paul Mock, Inc. (f) Raymour Electric Co. (g) Schneider Electric Co. (h) Star Electric Corp. (i) Star-Brite Electric Co. and (j) T. Reilly Electric Corp. f/k/a Modica & Reilly Electric Corp.[7]

III. ANALYSIS AND DISCUSSION

A. Procedural Issues

Due Process and Laches—Case No. 29–CA–18784[8]

Respondents argue that the amendment to the complaint naming 50 individual-employer members of UECA as respondents nearly 5-1/2 years after the original complaint was issued constitutes a violation of due process warranting dismissal of the amended complaint. Respondents assert that although the original charge was filed against UECA and its 91 employer-members, the original complaint which was issued in February, 1995, named only UECA as a respondent. It should be noted, however, that the caption of the complaint was entitled UECA "and its individual-employer members."

---

[7] On April 27, 1997, a letter from T. Reilly was sent to Local 3 by UECA which stated that Reilly employed no workers since August, 1997. However, inasmuch as reports from the months of May, June and July were also sought, by not submitting any reports for those months, UECA and Reilly have unlawfully failed to supply the requested information.

[8] Motions to dismiss and for summary judgment were made by Respondents which will be discussed here.

In arguing that service of the complaint upon an employer association cannot constitute service upon its members, Respondents ignore the fact that the original complaint was served upon the employer-members of UECA. Further, the complaint did not name only UECA. Its caption named, in addition, the employer members of UECA.

Although there was no evidence that the charge was served upon the Respondents, it is clear that the original complaint was properly served. Even assuming the charge was not served, proper service is obtained by service of the complaint within the Section 10(b) period. Here, the alleged unfair labor practice occurred on September 21, 1994. Inasmuch as the complaint was served upon the Respondents on February 28 and March 3, 1995, service of the complaint was made within the 10(b) period. *Buckeye Plastic Molding*, 299 NLRB 1053 (1990). I accordingly find and conclude that proper service has been made upon all the Respondents. *Southwestern Colorado Contractors Assn.*, 153 NLRB 1141, 1147 (1965).

Respondents contend that the amended complaint failed to give the individual-employer members named therein timely notice of the alleged failure to provide information in 1994. They assert that inasmuch as they were omitted from the original 1995 complaint they had no reason to believe that they were active parties to the matter who needed to preserve evidence to defend their behavior 5 years later.

The original complaint set forth in the caption that the Respondents were "United Electrical Contractors Association a/k/a United Construction Contractors Association and its individual-employer members". All 91 members of UECA were served with the original complaint. Notwithstanding that they were not specifically named as respondents in the text of the original complaint, they clearly were on notice that they were involved in this proceeding and that their conduct in furnishing or not furnishing UECA with the requested documents would be part of the proof at a hearing.

The elements of proof required by the equitable defense of laches are (a) lack of diligence by the party against whom the defense is asserted and (b) prejudice to the party asserting the defense. *Roofing. Metal & Heating Associates*, 304 NLRB 155, 160 (1991). Here, there is clearly a lack of diligence by General Counsel in prosecuting these cases. More than five years had elapsed between the issuance of the original complaint and the issuance of the amended complaint. The amended complaint did no more than add the individualemployer members of UECA as named Respondents. No explanation was made by General Counsel as to the reason for the delay. However, "the Board has consistently held that the doctrine of laches is generally inapplicable to Board proceedings." *St. Anthony Hospital Systems*, 319 NLRB 46, 51 (1995). Where prosecutorial delay is not calculated to deny a respondent a fair hearing the defense of laches must fail. *Consolidated Casinos Corp.*, 266 NLRB 988, 992 (1983). "The Board is not required to place the consequences of its own delay, even if inordinate,

upon wronged employees to the benefit of wrong doing employers." *NLRB v. J. H. Rutter-Rex Manufacturing Co.*, 396 U.S. 262, 265 (1969).[9]

Respondents were not denied a fair hearing due to the delay in the issuance of the amended complaint and in bringing this case to hearing. The only issue presented here is whether certain information was provided to Local 3 upon its request. Thus, the question is what happened historically—in the past—when Local 3 requested the information. Was the information provided at that time or was it not? Clearly, several parties possessed evidence as to what data was submitted to Local 3: UECA, the individual employers who submitted the information to UECA, and Local 3 which received it. Accordingly, Respondents are not prejudiced by the passage of time. In addition, all Respondents had an opportunity to appear at the hearing, and certain Respondents did appear at the hearing and defended the allegations against them, presenting evidence as to what information was turned over to Local 3 and when it was submitted. There has been no showing of prejudice to Respondents in the delay in issuing the amended complaint and in prosecuting these cases. All Respondents had an opportunity to appear and defend their interests. Many were represented by the law firm which represented UECA.

---

[9] Although *Rutter Rex* involved a backpay claim, the same principle applies here. The employees here are the wronged party inasmuch as Respondents' failure to provide, or delay in providing relevant information had an adverse effect upon Local 3's ability to represent them in collective-bargaining negotiations.

UECA further asserts that on June 26, 1995, it provided the Regional Director with a list of employers who were cooperating and those who had not cooperated with UECA in its attempt to provide Local 3 with requested information. UECA stated that it assumed that the Regional Office would take "appropriate action against those companies who have not cooperated, and not inappropriately impute such misconduct to [UECA] and its cooperating membership. . . ." On October 9, UECA sent a list of cooperating and non-cooperating contractors to Local 3. General Counsel argues that it is irrelevant that the Regional Office knew which companies were cooperating and which were not. I agree. The issue is whether the requested information was provided.

Expert contends that this case should be dismissed against it because it provided requested information in Case No. 29–CA–21456–6 and, accordingly that charge was withdrawn. Expert asserts that representations were made to it by the Regional Office at the time of the withdrawal of the charge that there were no cases involving requests for information pending against it. Of course, the original complaint was pending, but that named only UECA as a respondent. Thereafter, the amended complaint was issued which named Expert as a respondent.

Even assuming that misrepresentations were made to Expert, I find that they do not constitute a defense to the amended complaint allegation that it did not furnish requested information. The withdrawal of a different charge against Expert is

distinct from the issues raised in this case. I accordingly reject Expert's argument.

B. Substantive Issues

1. The relevance of the requested information

Respondents deny the relevance of the requested information. Information sought concerning bargaining unit employees is presumptively relevant for purposes of collective bargaining and must be furnished upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *People Care, Inc.*, 327 NLRB 814, 823 (1999). Names, addresses, telephone numbers, classifications of employees and those on layoff have been found to be presumptively relevant. *Maple View Manor*, 320 NLRB 1149 (1996); *People Care, Inc.*, above; *Schuylkill Contracting Co.*, 271 NLRB 71, 72 (1984). In addition, information concerning the amount of an employer's contributions to a pension plan—the remittance reports requested here—is also necessary and relevant to Local 3's representative responsibility. *Right Away Foods*, 270 NLRB 1278, 1280 (1984).

I accordingly find and conclude that all the information requested, as set forth in the amended complaint, was relevant and necessary to Local 3's performance of its responsibilities toward the unit employees. Accordingly, Respondents were required to furnish to Local 3 the information requested.

2. The inability of UECA to provide the requested information and other defenses

The Board has stated that a union is entitled to requested information at the time it makes its initial request and it is the respondent's duty to furnish it as promptly as possible. *Pennco, Inc.*, 212 NLRB 677, 678 (1974). In determining whether a specific period of time constituted undue delay in providing information, the Board has stated that "the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993); *FMC Corp.*, 290 NLRB 483, 489 (1988).

UECA's failure to make reasonable efforts to obtain the requested information would not have satisfied its bargaining obligation under Section 8(a)(5) of the Act. *Rice Growers Assn.*, 312 NLRB 837 (1993). "In evaluating the promptness of the information requested, the Board will consider the complexity and extent of the information sought, its availability and the difficulty in retrieving the information." *Samaritan Medical Center*, 319 NLRB 392, 398 (1995).

As set forth above, on September 21, 1994, Local 3 first requested names, addressees, telephone numbers and names of employees on layoff.

UECA argues that it made a diligent, immediate effort to obtain the information from its member-employers. UECA president Cardillo

testified that at a meeting on October 12, 1994 he asked the contractors to supply the requested information, and UECA's attorney advised Local 3 on October 14 that UECA was attempting to contact all the employers to which Local 3's September 21 letter was sent.

I cannot credit Cardillo's testimony concerning his alleged request on October 12. If such a request was made it is likely that the contractors would have responded more quickly than they actually did. In fact, the first information given to Local 3 was on December 14, which included names and addresses of certain employees. It must be assumed, as UECA's attorney promised in his letter of October 14, that when the information became available it would be supplied to Local 3. Accordingly, I find that the first information became available shortly before December 14. That date coincides with December 2, when UECA admittedly sent its first letter to contractors requesting that they submit a "list of workers—your payroll for September 2, 1994."

A finding is therefore warranted that UECA first requested information from its contractors in its letter of December 2, which was 2-1/2 months after the Union's request. And even that request was incomplete—UECA asked only for a list of workers, notwithstanding that the Union had requested telephone numbers and information concerning employees who were on layoff status.

I accordingly find that UECA delayed in diligently requesting the information asked for by the Union. In addition, the information which was

supplied was not furnished in a timely manner or in its entirety, as requested. Rather, the information was supplied over a long period of time and when it was turned over it was incomplete, omitting telephone numbers and information concerning laid off employees. Further, requested information, set forth above, for certain employers, was not provided at all. "An unreasonable delay in furnishing . . . information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. *Woodland Clinic*, 331 NLRB 735, 736–737 (2000). The delay in providing the information "severely diminished the usefulness to the Union, at the time it was provided, of the requested information." *Woodland*, above at 737.

UECA asserts that although it was willing to provide the requested information and diligently sought it, it was unable in many instances to obtain the cooperation of its employermembers who failed to submit it to UECA. As testified by Cardillo, UECA does not maintain the information requested but must rely upon its members, who are in possession of the information, to furnish it to UECA for submission to Local 3.

UECA argues that a finding against it would not effectuate the purposes of the Act inasmuch as UECA does not maintain records of employee bargaining unit members, and UECA cannot, on its own, generate any of the requested information. It can only make reasonable efforts to obtain information from its employer-members. UECA asserts that although it was unable to provide the requested information since it did not maintain the

information, it made reasonable and prompt efforts to obtain the information and, in addition, promptly provided all the information that it was able to obtain.

UECA correctly argues that the Board holds that the duty to provide information requires a reasonable, good faith effort to supply the data requested. It is also true that UECA frequently and periodically requested and even demanded that its contractors supply information, and also threatened that the Board may seek to find them in contempt of the Second Circuit's order requiring good faith bargaining if they do not supply the information. General Counsel argues that UECA did not do enough. Its by-laws provide that it could bring a lawsuit against its members to accomplish any lawful purpose—which in this case would include the turning over of information and General Counsel suggests that UECA should have sued its membercontractors. Cardillo stated that it did not sue contractors which were cooperating with it. However, it does not appear that UECA sued those which were not cooperating. Instead, it gave a list of the noncooperating contractors to the Regional Office and to the Union with a request that it take appropriate action against them.

Although I can understand UECA's predicament in not being able, by persuasion, to convince its contractors to supply the information, I do not believe that it should be relieved of its obligation, as the representative of the contractors and the representative which was ordered to bargain with the Union, to take punitive steps, if necessary,

to force compliance with its duty to provide information.

A dangerous precedent would be established if it was held that an employer association could be relieved of its responsibility to provide information simply by asserting that its employer-members refused to supply it, without doing as much as it could to ensure that those members complied with the union's requests.

In this case, UECA having found that its requests that its members furnish information were not promptly and completely complied with, I find that it had an obligation to take additional measures to compel compliance with its requests, including the institution of a lawsuit against its noncomplying contractors.

UECA defended its failure to provide lists of laid off employees on the ground that UECA contractors do not maintain layoff lists. UECA president Cardillo testified that Tap does not maintain a layoff list, Both he and UECA official Bellantoni testified that no layoff lists were kept by the contractors.

However, Local 3 did not request a layoff list. Rather, it requested "a list of all such employees who are currently on temporary layoff status." Accordingly, what was being sought was a list of names of employees on layoff status, which could have been compiled by the contractors. Notwithstanding that no formal "layoff list" was maintained by the employers, there were employees

on layoff whose names could have been assembled and provided to Local 3. Accordingly, I reject Respondents' argument that inasmuch as no "list" was maintained, the information requested—employees on layoff status—could not have been supplied.

CONCLUSIONS OF LAW

1. The Respondents, UECA, and the employer-members of UECA, are employers within the meaning of Section 2(2), (6) and (7) of the Act.

2. Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since February 23, 1993, Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO has been, and is, the exclusive representative of the employees in the following appropriate collective-bargaining unit within the meaning of Section 9(a) of the Act:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

4. By failing to provide Local 3 with certain information and by delaying in furnishing information to Local 3 pursuant to its written request dated September 21, 1994, and the classifications of employees, Respondents violated Section 8(a)(1) and (5) of the Act.

5. By failing to provide Local 3 with remittance reports made to the Local 363, IBT Pension Plan, pursuant to its written request dated October 31, 1997, Respondents violated Section 8(a)(1) and (5) of the Act.

6. These unfair labor practices affect commerce within the meaning of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Respondents furnish Local 3 with all the information requested by Local 3 in its letters of September 21, 1994 and October 31, 1997, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

General Counsel requested a remedy pursuant to *Mar-Jac Poultry*, 136 NLRB 785 (1962).

That case extended the certification year for one additional year because of the employer's refusal to bargain with the union.

On September 24, 1994, the Second Circuit Court of Appeals enforced the Board's order requiring bargaining by UECA. Bargaining began on October 24, 1994. The certification year began following affirmance of the Board's bargaining order and when bargaining in good faith begins. Accordingly, the certification year began on October 24, 1994. *Van Dorn Plastic Machinery Co.*, 300 NLRB 278, 279 (1990).

In assessing the appropriate remedy in such circumstances, it is necessary to take into account the realities of collectivebargaining negotiations by providing a reasonable period of time in which Local 3 and Respondents "can resume negotiations and bargain for a collective-bargaining agreement "without unduly saddling the employees with a bargaining representative that they may no longer wish to represent them. Various factors are considered in making such an evaluation, including the nature of the violations found, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations." *Wells Fargo Armored Services Corp.*, 322 NLRB 616, 617 (1996).

I find that Respondents' ongoing unlawful refusal and failure to supply the requested information since September, 1994 through the cessation of bargaining in June, 1998, precluded

Local 3 from engaging in meaningful bargaining, particularly, as testified by McElroen, preventing Local 3 from being able to contact a significant number of employees in order to obtain their views upon the bargaining proposals of Local 3. Refusals to furnish information have led to extensions of the certification year. *Wells Fargo*, above; *Bryant & Stratton Business Institute,* 321 NLRB 1007, 1045 (1996). I am aware that more than 50 bargaining sessions took place in the 4 years of bargaining, and that UECA's defense is that it was unable to obtain the information from its individual-employer members. Nevertheless I believe that because information fundamental and essential to the representation of the employees by Local 3 was not available to it during the course of the bargaining, a 1-year extension of the certification year is appropriate. I further do not believe that there has been sufficient evidence that Local 3 acted unreasonably under the circumstances or contributed to the unfair labor practices of Respondents.

As set forth above, the charge alleging a failure to provide information was filed on December 23, 1994 based upon an unfair labor practice which I have found occurred on September 21, 1994, specifically, Respondents' failure and refusal to furnish certain information. Accordingly, the certification year had not yet run when this unfair labor practice occurred. Inasmuch as the unfair labor practice continued for more than 1 year, I shall order that the certification year be extended for an additional 12 months from the resumption of bargaining.

I accordingly shall order that the certification year be extended for 1 year, starting with the date upon which Respondents provide Local 3 with all the requested information except such information already provided to Local 3, and except the social security numbers of employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

A. The Respondent, United Electrical Contractors Association a/k/a United Construction Contractors Association, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide certain information to Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, and delaying in furnishing other information to Local 3.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

---

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with Local 3 as the exclusive representative of the employees in the following appropriate collective-bargaining unit concerning terms and conditions of employment, as if the initial year of certification has been extended for an additional 12 months from the commencement of bargaining and, if an understanding is reached, embody the understanding in a signed agreement:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Provide Local 3 with the requested information except such information already provided to Local 3.

(c) Within 14 days after service by the Region, post at its facility in New York, NY, copies of the attached notice marked "Appendix B."[11] Copies of the notice, on forms provided by the Regional

---

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 21, 1994.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) DiFrancia Electric, Inc. (b) Farica Electric Contracting Corp.[12] (c) G & R Electrical Contracting, Inc. (d) Lesil Reliable Electric

---

[12] UECA claims that Farica was never represented by it in negotiations and was not on the list of individual-employer members of UECA given to Local 3. However, on October 2, 2000, Farica acknowledged, by letter, that it was bound by the 1993 certification and that it was a member of UECA and represented by it in negotiations. I accordingly find that Farica is properly subject to an Order in this case.

Co., Inc. (e) Lisa Electric, Inc. a/k/a YNR Electric (f) Maximum Electrical Contracting, Inc. (g) Milad Contracting Corp. (h) Modica & Reilly Electric Corp. (i) Mondl Electric Co., Inc. (j) Norlin Electrical Contracting Co. (k) Pantel Contracting Corp. (l) Positive Electric Association, Inc. (m) T & A Electrical Contracting (n) Tri-Town Electric Corp. (o) and W.T. Hickey Corp., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the information requested by Local 3 in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately furnish to the Union the information requested by Local 3 in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees. (b) Within 14 days after service by the Region, post at their facilities copies of the attached

notice marked "Appendix C"[13] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any of the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 21, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

C. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) C.B. Electrical (b) Eugene Iovine, Inc. (c) Expert Electric, Inc. (d)

---

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Falcone Electric Corp. (e) Ferrara Electrical Controls (f) Global Electrical Contracting (g) Granna Electric (h) Kew Electric Co. and (i) Star Brite Electric Corp., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying furnishing complete information, including the telephone numbers of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Local 3 in a timely manner with complete information requested by Local 3, including the telephone numbers of unit employees.

(b) Within 14 days after service by the Region, post at their facilities copies of the attached notice marked "Appendix D."[14] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the

---

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 14, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

D. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) Alco Electric Co. (b) Atlas Electrical Contractors, Inc. (c) Bisantz Electric Co., Inc. (d) County Wide Electric (e) DeCeck & Leonard, Inc. (f) Eaton Electric, Inc. (g) Gilston Electrical Contracting Corp. (h) J.K. Electric Corp. (i) Lipco Electric Co. (j) Lobello Electrical Installation (k) M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp. (l) Paul Mock, Inc. (m) Raymour Electric Company (n) Schneider Electric Company, Inc. (o) Square Electric Co., Inc. (p) T & J Electrical Contractors (q) Tap Electrical Contractors Service, Inc. (r) V & R Electrical Contractors, Inc. (s)

Vintage Electric Corp. and (t) Controneo & Marino's United Electric Co., Inc, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying furnishing complete listings of telephone numbers of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Local 3 in a timely manner with complete listings of telephone numbers of unit employees.

(b) Within 14 days after service by the Region, post at their facilities copies of the attached notice marked "Appendix E."[15] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous

---

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 14, 1994.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

E. The Respondents, United Electrical Contractors Association a/k/a United Construction Contractors Association, and (a) Blake Electric Contracting, Inc. (b) Eaton Electric, Inc. (c) J.K. Electric Corp. (d) Mondl Electric Co., Inc. (e) Paul Mock, Inc. (f) Raymour Electric Co. (g) Schneider Electric Co. (h) Star Electric Corp. (i) Star-Brite Electric Co. and (j) T. Reilly Electric Corp. f/k/a Modica & Reilly Electric Corp, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish remittance reports submitted to the Local 363

Pension Fund for the period May through October, 1997.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide Local 3 in a timely manner with remittance reports submitted to the Local 363 Pension Fund for the period May through October, 1997.

(b) Within 14 days after service by the Region, post at their facilities copies of the attached notice marked "Appendix F."[16] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the

---

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

pendency of these proceedings, the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since October 31, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 7, 2001

APPENDIX A

Action Electrical Contracting Corp.
Alco Electric Co.
Atlas Electrical Contractors, Inc.
Bisantz Electric Co., Inc.
Bran Electric Corp.
C. B. Electrical
C & L Electric, Inc.
Cotroneo & Marino's United Electric Co., Inc.
County Wide Electric
DeCeck & Leonard, Inc.
DiFrancia Electric, Inc.
Eaton Electric, Inc.
Eugene Iovine, Inc.
Expert Electric, Inc.
Falcone Electric Corp.
Farica Electric Contracting Corp.
Ferrara Electrical Controls

G & R Electrical Contracting, Inc.
Gilston Electrical Contracting Corp.
Global Electrical Contracting
Granna Electric
Heller Electric Co., Inc.
Interphase Electrical Corp.
J. K. Electric Corp.
Kew Electric Co.
Lesil Reliable Electric Co., Inc.
Lipco Electric Co.
Lisa Electric, Inc. a/k/a YNR Electric, Inc.
Lobello Electrical Installation
M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp.
Maximum Electrical Contracting Corp.
Milad Contracting Corp.
Mondl Electric Co., Inc.
Norlin Electrical Contracting Co.
Pantel Contracting Corp.
Paul Mock, Inc.
Positive Electric Association, Inc.
Raymour Electrical Co.
Schneider Electric Co., Inc.
Square Electric Co., Inc.
Star Brite Electric Co.
T & A Electrical Contracting
T & J Electrical Contracting
T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp.
Tap Electrical Contractors Service, Inc.
Tri-Town Electric Corp.
V & R Electrical Contractors, Inc.
Vintage Electric Corp.
W.T. Hickey Corp.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide certain information to Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, or delay furnishing other information to Local 3.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL on request, bargain with Local 3 as the exclusive representative of the employees in the following appropriate collective-bargaining unit concerning terms and conditions of employment, as if the initial year of certification has been extended for an additional 12 months from the commencement of bargaining and, if an understanding is reached, embody the understanding in a signed agreement:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a

United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL provide Local 3 with the requested information except such information already provided to Local 3.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to furnish the information requested by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately furnish to the Union the information requested by Local 3 in its letter of September 21, 1994, and the classifications of employees, except such information already provided to Local 3, and except the social security numbers of employees.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND DIFRANCIA ELECTRIC, INC., FARICA ELECTRIC CONTRACTING CORP., G & R ELECTRICAL CONTRACTING, INC., LESIL RELIABLE ELECTRIC CO., INC., LISA ELECTRIC, INC. A/K/A YNR ELECTRIC, MAXIMUM ELECTRICAL CONTRACTING, INC., MILAD CONTRACTING CORP., T. REILLY ELECTRICAL CORP., F/K/A MODICA & REILLY ELECTRIC CORP., MONDL ELECTRIC CO., INC., NORLIN ELECTRICAL CONTRACTING CO., PANTEL CONTRACTING CORP., POSITIVE ELECTRIC ASSOCIATION, INC., T & A ELECTRICAL CONTRACTING, TRI-TOWN ELECTRIC CORP., AND W.T. HICKEY CORP.

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT delay furnishing complete information, including the telephone numbers of unit employees to Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide Local 3 in a timely manner with complete information, including the telephone numbers of our unit employees.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND ACTION ELECTRICAL CONTRACTING CORP., C. B. ELECTRICAL, EUGENE IOVINE, INC., EXPERT ELECTRIC, INC., FALCONE ELECTRIC CORP., FERRARA ELECTRICAL CONTROLS, GLOBAL ELECTRICAL CONTRACTING, GRANNA ELECTRIC, KEW ELECTRIC CO., AND STAR BRITE ELECTRIC CO.

APPENDIX E

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT delaying furnishing to Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, complete listings of telephone numbers of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide Local 3 in a timely manner with complete listings of telephone numbers of our unit employees.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND ALCO ELECTRIC CO., ATLAS ELECTRICAL CONTRACTORS, INC., BISANTZ ELECTRIC CO., INC., COUNTY WIDE ELECTRIC, DECECK & LEONARD, INC., EATON ELECTRIC, INC., GILSTON ELECTRICAL CONTRACTING CORP., J. K. ELECTRIC CORP., LIPCO

ELECTRIC CO., LOBELLO ELECTRICAL INSTALLATION, M.P.E. ELECTRICAL CONTRACTING CORP. D/B/A STAR ELECTRIC CORP., PAUL MOCK, INC., RAYMOUR ELECTRIC CO., SCHNEIDER ELECTRIC CO., INC., SQUARE ELECTRIC CO., INC., T & J ELECTRICAL CONTRACTORS, TAP ELECTRICAL CONTRACTORS SERVICE, INC., V & R ELECTRICAL CONTRACTORS, INC., VINTAGE ELECTRIC CORP., AND COTRONEO & MARINO'S UNITED ELECTRIC CO., INC.

APPENDIX F

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to furnish to Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, remittance reports submitted to the Local 363 Pension Fund for the period May through October, 1997.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide Local 3 in a timely manner with remittance reports submitted to the Local 363 Pension Fund for the period May through October, 1997.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION AND BLAKE ELECTRIC CONTRACTING, INC., EATON ELECTRIC, INC., J. K. ELECTRIC CORP., MONDL ELECTRIC CO., INC., PAUL MOCK, INC., RAYMOUR ELECTRIC CO., SCHNEIDER ELECTRIC CO., STAR ELECTRIC CORP., STAR BRITE ELECTRIC CO., T. REILLY ELECTRIC CORP. F/K/A MODICA & REILLY ELECTRIC CORP.

[ENTERED: MAY 15, 2006]

347 NLRB No. 2

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Expert Electric, Inc. *and* Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO.

United Electrical Contractors Association a/k/a United Construction Contractors Association and its Individual-Employer Members (See Appendix A) *and* Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO. Cases 29–CA–21967 and 29–CA–22399

May 15, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On September 6, 2001, Administrative Law Judge Steven Davis issued the attached decision. Respondents United Electrical Contractors

Association (UECA) together with various employers and Respondent Expert Electric, Inc. (Expert) each filed exceptions and supporting briefs, and the General Counsel filed an answering brief. The General Counsel filed exceptions and a supporting brief, and UECA together with various employers filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified herein and to adopt the recommended Order as modified and set forth in full below.[2]

---

[1] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that UECA violated Sec. 8(a)(5) by refusing to bargain with and withdrawing recognition from the Union, we find it unnecessary to rely on the judge's suggestion, in sec. II,B,3,a of his decision, that "bad faith bargaining may, in certain circumstances, excuse an employer's refusal to bargain" because, for the reasons stated by the judge, we agree with his finding that the Union did not bargain in bad faith.

[2] We have modified the judge's recommended Order (1) to provide that UECA shall post required notices at its most recent location in Holbrook, New York; (2) to provide,

1. We affirm the judge's finding that Section 10(b) time-bars the complaint in Case 29–CA–22399 against the individual employer-members of UECA named in Appendix A. In so doing, however, we find it unnecessary to rely on *Sewanee Coal Operators Assn.*, 167 NLRB 172 (1967), which the judge cited for the proposition that participation

---

consistent with *Cascade Employers Association, Inc.*, 126 NLRB 1014, 1020 (1960), that UECA shall utilize all its powers to ensure the cooperation of its employer-members in effectuating the Order; (3) to delete provisions in the recommended Order requiring UECA to reinstate Expert as a UECA member and requiring Expert to request such reinstatement; and (4) to require that UECA, in bargaining with the Union on a multiemployer basis, shall do so as the representative of its employer-members and of any former employer-members that have caused their own expulsion from UECA. With regard to the latter two modifications, we observe that Expert, having caused its own expulsion from UECA, remains obligated, notwithstanding its loss of membership in UECA, to bargain with the Union on a multiemployer basis and is required by the Order herein to bargain on that basis. See *Roberts Electric Co.*, 227 NLRB 1312, 1317 (1977). Accordingly, any other former employer-member of UECA that also caused its own expulsion therefrom would also remain obligated to bargain with the Union on a multiemployer basis regardless of its current nonmembership in UECA. Thus, it is unnecessary to modify the recommended Order, as requested by the General Counsel, to require UECA to reinstate 25 other employers. Finally, we have modified the judge's recommended Order to conform to our decision in *Excel Container, Inc.*, 325 NLRB 17 (1997).

With regard to the notices, the General Counsel has requested that each notice include an appendix to its unit description, listing all of the employers of unit employees. We find merit in the General Counsel's request. Thus, we have substituted new notices to comport with this request, with the foregoing modifications of the recommended Order, and with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enfd. 354 F.3d 534 (6th Cir. 2004).

in a multiemployer bargaining unit does not render one participant the agent of another for the purpose of accepting service of process. Preliminarily, we observe that *Sewanee Coal* does not address the issue of whether a multiemployer association, as opposed to a participating employer-member of that association, might be an agent of its employer-members for the purpose of accepting service. We need not address that issue here, however, because the charge served on UECA in Case 29–CA–22399 named only UECA as the charged party. Because the charge did not name the employermembers of UECA as charged parties, there were no parties on whose behalf UECA could be found to have accepted service of the charge. Our decision in the related case *United Electrical Contractors Assn.*, 347 NLRB No. 1 (2006) (*UECA*), which we also issue today, is distinguishable. Although in *UECA*, as here, a complaint naming various employer-members of UECA was issued based on a charge served on UECA alone, the charge served in *UECA* named UECA's employermembers. For the reasons explained in that decision, we found service of the charge on UECA to constitute service on its employer-members.[3] But the factual predicate of that finding was that the charge named UECA's employer-members as charged parties. That

---

[3] Member Schaumber agrees with his colleagues that service was not effected on the employer-members of the multiemployer bargaining association, UECA, in this case. However, as stated in *UECA*, supra at fn. 8 Member Schaumber found it unnecessary to pass on whether service on a multiemployer bargaining association constitutes service on its employer-members, as service was otherwise effected on the respondent employer-members in that case.

predicate is absent here. Consequently, we cannot find in this case, as we did in *UECA*, that the employer-members were effectively served with the charge, as required by Section 10(b), by virtue of service on their bargaining agent.

2. UECA argued before the judge, and argues to us, that if the complaint in Case 29–CA–22399 is dismissed as against its employer-members, it must be dismissed in its entirety—i.e., as against UECA as well—for failure to join "necessary parties." UECA cites no authority to support its view that its employer-members are necessary parties in this proceeding, nor does it indicate by what criteria a party is deemed "necessary." The judge rejected this argument, and so do we.

The Supreme Court has stated that in Board unfair labor practice proceedings, which are "narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights." *National Licorice Co. v. NLRB*, 309 U.S. 350, 363 (1940). Even assuming, however, that the Board were to apply the "traditional" rule governing necessary and indispensable parties—Rule 19 of the Federal Rules of Civil Procedure—that rule would not support a finding that the employer-members here are necessary and indispensable to this case.

Under Rule 19(a), a party is necessary

> if (1) in the person's absence complete relief cannot be accorded among those already

> parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Fed.R.Civ.P. 19(a). If a party is found necessary under Rule 19(a) but cannot be joined, it then must be determined under Rule 19(b) whether the necessary party is also indispensable. If the party that cannot be joined is both necessary and indispensable, the case must be dismissed.

Our inquiry here is limited to whether Rule 19(a)(1) applies to the individual employer-members. UECA does not contend that the employer-members claim an interest requiring their joinder so as to protect either their interest (Rule 19(a)(2)(i)) or the interests of UECA or another party (Rule 19(a)(2)(ii)). We find that the employer-members are not necessary parties under Rule 19(a)(1) because the Board can accord full relief to the parties without the joinder of each employer-member. Our Order requires UECA to bargain with the Union. That remedy is unaffected by the employer-members' presence or absence as parties in this case. Even if the employer-members were named parties, had been found to have violated Section 8(a)(5), and were subject to the bargaining order, UECA would, as their agent, carry out the bargaining with the Union

on the employermembers' behalf. UECA predicts that its employermembers will refuse to cooperate with it with respect to the collective-bargaining process. We reject this argument as speculative and as irrelevant to UECA's duty to bargain with the Union. Moreover, the Association's fulfillment of its duty to bargain will bind the employermembers. In this regard, the Board has not made findings, either in this case or in its companion, *United Electrical Contractors Association*, supra, that the facts here present the kind of "unusual circumstances" that would release the employer-members from their obligation to honor a collective-bargaining agreement that UECA negotiates with the Union. See *Resort Nursing Home v. NLRB*, 389 F.3d 1262, 1267 (D.C. Cir. 2004) (noting that "'unusual circumstances' that would justify withdrawal [from a multi-employer bargaining association] after the commencement of bargaining normally would be found only when an employer is subject to extreme financial pressures or when a bargaining unit is substantially fragmented," and that the Board has interpreted such circumstances narrowly), citing *Charles D. Bonnanno Linen Service Inc. v. NLRB*, 454 U.S. 404, 411 fn. 6 (1982). Thus, any internal disharmonies that UECA may face do not affect our ability to accord relief for the 8(a)(5) violations alleged and found by ordering UECA to recognize and resume bargaining with the Union on the employer-members' behalf.

Based on the foregoing, we find that UECA's employer-members are not necessary parties. Because a finding of necessity is prerequisite to indispensability under Rule 19, it follows that the

employer-members cannot be indispensable. Thus, we affirm the judge's finding that dismissal of the complaint against UECA in Case 29–CA–22399 is not warranted by the employermembers' absence.

3. The General Counsel has requested, inter alia, that we order mailing of the notice to all of the unit employees. The General Counsel maintains that posting of the notice at UECA's office is not a sufficient remedy given that UECA does not employ any of the unit employees and few, if any, of the employees have occasion to visit UECA's office. UECA opposes the General Counsel's notice-mailing request, arguing that such a remedy would impose an unreasonable burden on UECA. We agree with UECA.

Board remedies must be "adapted to the situation which calls for redress." *NLRB v. McKay Radio & Tel. Co.*, 304 U.S. 333, 348 (1938). Thus, Board remedies should take into account practical considerations relating to the parties involved. Here, a notice-mailing requirement would require UECA to gather the names and addresses of all former unit employees employed by its numerous employer-members at any time since the date of the first unfair labor practice in this case, which is more than 7 years ago. Under the unusual circumstances of this case, we find a notice-mailing requirement to be unduly burdensome. Therefore, we shall provide for the traditional notice-posting remedy. We also note

that nothing precludes the Union from posting copies of the attached notices at the Union hall.[4]

ORDER

A. The National Labor Relations Board orders that the Respondent, United Electrical Contractors Association a/k/a United Construction Contractors Association (UECA), Holbrook, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Local 3, International Brotherhood of Electrical Workers, AFL–CIO (the Union), by withdrawing recognition from the Union and refusing thereafter to bargain with it as the representative of its individual employer-members and of any former employer-members that have caused their own expulsion from UECA.

(b) In any like or related manner interfering with, restraining, or coercing employees

---

[4] Member Walsh would modify the judge's recommended Order as requested by the General Counsel. In his view, the General Counsel's notice-mailing request is based on the realistic assessment that the unit employees are not likely to see posted notices given that they work in the construction industry. The practical difficulties the majority cites can be worked out between UECA and the Region or addressed, if need be, at a compliance proceeding. That the Union may, if it wishes, post copies of the notices at its hiring hall is not an equitable alternative. UECA is the wrongdoer here, not the Union.

in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and resume bargaining with the Union, on behalf of the individual employermembers of UECA and of any former employermembers that have caused their own expulsion from UECA, as the exclusive representative of the employees in the following appropriate collective-bargaining unit, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Utilize all powers UECA possesses by virtue of its relationship to its employer-members to ensure their cooperation in the effectuation of the objective of the Order.

(c) Within 14 days after service by the Region, post at its Holbrook, New York facility,

copies of the attached notice marked "Appendix B."[5] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 11, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting
to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondent, Expert Electric, Inc., Astoria, New York, its officers, agents, successors, and assigns, shall

---

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

1. Cease and desist from

(a) Improperly withdrawing from the multiemployer bargaining unit and withdrawing recognition from Local 3, International Brotherhood of Electrical Workers, AFL–CIO ("the Union").

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union as the exclusive representative of its employees in the following appropriate multiemployer bargaining unit, and bargain with the Union through UECA as its representative:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its Astoria, New York facility, copies

of the attached notice marked "Appendix D."[6] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 21, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 15, 2006

_____

Robert J. Battista, Chairman

---

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Action Electrical Contracting Corp.
Alco Electric Co.
Atlas Electrical Contractors, Inc.
Bisantz Electric Co., Inc.
Blake Electrical Contracting, Inc.
Bran Electric Corp.
C. B. Electrical
C & L Electric, Inc.
Chapman Electrical Contracting Co.
Con Tech Electric Service Co., Inc.
Cotroneo & Marino's United Electric Co., Inc.
County Wide Electric
DeCeck & Leonard, Inc.
DiFrancia Electric, Inc.
Eaton Electric, Inc.
Eugene Iovine, Inc.
Expert Electric, Inc.
Falcone Electric Corp.
Farica Electric Contracting Corp.
Feola Electric, Inc.
Ferrara Electrical Controls
G & R Electrical Contracting, Inc.
Gilston Electrical Contracting Corp.
Global Electrical Contracting
Granna Electric

Heller Electric Co., Inc.
Interphase Electrical Corp.
J. K. Electric Corp.
Kew Electric Co.
Lesil Reliable Electric Co., Inc.
Lipco Electric Co.
Lisa Electric, Inc. a/k/a YNR Electric, Inc.
Lobello Electrical Installation
M.P.E. Electrical Contracting Corp. d/b/a Star Electric Corp.
M & W Electric Corp.
Maximum Electrical Contracting Corp.
Milad Contracting Corp.
Mondl Electric Co., Inc.
Norlin Electrical Contracting Co.
Northern Electrical Contracting
Ozone Electric Corp.
Pantel Contracting Corp.
Paul Mock, Inc.
Point Electrical Ltd.
Positive Electric Association, Inc.
Raymour Electrical Company
Schneider Electric Company, Inc.
Square Electric Co., Inc.
Star Brite Electric Corp.
T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp.
T & A Electrical Contracting
T & J Electrical Contracting
Tap Electrical Contractors Service, Inc.
Tri-Town Electric Corp.
V & R Electrical Contractors, Inc.
Vintage Electric Corp.
W.T. Hickey Corp.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Local 3, International Brotherhood of Electrical Workers, AFL–CIO (the "Union"), by withdrawing recognition from the Union and refusing thereafter to bargain with it as the representative of the unit employees employed by the individual employer-members of the United Electrical Contractors Association a/k/a United Construction Contractors Association ("UECA") and any former employer-members that have caused their own expulsion from UECA.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, on request, recognize and resume bargaining with the Union, on behalf of the individual employermembers of UECA and of any former employermembers that have caused their own expulsion from UECA, as the exclusive representative of the employees in the following appropriate collective-bargaining unit, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members* of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL use all our powers to ensure that our employer-members cooperate in our efforts to meet the commitments we have made above.

---

* This notice shall be posted along with the attached document (marked here as Appendix C) listing the 91 employers that constituted the certified multiemployer unit.

UNITED ELECTRICAL CONTRACTORS ASSOCIATION A/K/A UNITED CONSTRUCTION CONTRACTORS ASSOCIATION

APPENDIX C

Abiele Contracting, Inc.
Able Electrical Contracting
Action Electrical Contracting
Alco Electric Co.
All Phase Electric
Accurate Electric
Alpha Maintenance & Electrical Corp.
Aly-Cine Electric Corp.
Atlas Electric Contractors, Inc.
Wm. Beeferman, Inc.
Bernard Pasquale, Inc.
P. Barry Contractors, Inc.
Bisantz Electric Co., Inc.
Blake Electric Contracting Co., Inc.
Boys Electric
Bran Electric
Ralph Borelli Electric
C. B. Electric
C & L Electric, Inc.
Chapman Contracting Co.
Colony Electric Company
Con Tech Electric Service Co., Inc.
Cotroneo & Marino's United Electric Co., Inc.
County Wide Electric
Cunardi Electrical Contracting Contracting, Inc.
Dececk & Leonard, Inc.
DiFrancia Electric, Inc.
Eaton Electric, Inc.

Eugene Iovine, Inc.
Expert Electric, Inc.
Falcone Electric Corporation
Feola Electric, Inc.
Ferguson Electric, Inc.
Ferrara Electric, Inc.
G & R Electrical Contracting, Inc.
Gateway Electrical Contracting Corp.
George F. Kolsch, Inc.
Gilston Electric Contracting Corp.
Global Electrical Contractors, Inc.
Granna Electric, Inc.
Heller Electric Contractors
Hunts Point Electric Corp.
Interphase Electrical Contractors Corp.
J. K. Electric
Jade Electric
Kew Electric Co.
L & H Power, Inc.
La Rene Electrical Co., Inc.
Lesil Reliable Electric Co., Inc.
Lipco Electric Co.
Lisa Electrical Inc.
Lobello Electric
M.P.E. Electrical Contracting Corp. d/b/a Star Electric Maximum Electrical Contracting Corp.
Milad Contracting Corp.
Mondl Electric Co., Inc.
Neon Images
Norlin Electric
M. Ostroff Electric, Inc.
Taglifaferro & Sons Electrical Co. d/b/a Northern Electric
North American Neon d/b/a North American Maintenance Ozone Electric

P.T.R. Electric Corp.
Pantel Contracting Corp.
Paul Mock, Inc.
Petri Electric Corp.
Point Electric Ltd.
Positive Electrical Associates, Inc.
Preferred Contracting, Inc.
Raymour Electric Company
Robert E. Burden Electrical Contractors
Schneider Electric Company
Seymour Electric Service, Inc.
Solar Electrical Company
Square Electric Co., Inc.
Standard Maintenance, Inc.
Star Brite Electric Corp.
Suriano Electric
T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp.
T & A Electrical Contractors
T & J Electrical Contractors
Tap Electrical Contractors Service
Tocs Electrical Contracting Corp.
Tri-Town Electric Corp.
Triac Electric Corp.
V & R Electrical Contractors, Inc.
Valquest Contracting Co., Inc.
Vintage Electric Corp.
W.P.C. Electric
W. T. Hickey Corp.
Willmont Electric Corp.

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT improperly withdraw from the multiemployer bargaining unit represented for purposes of collective bargaining with Local 3, International Brotherhood of Electrical Workers, AFL–CIO (the "Union") by United Electrical Contractors Association a/k/a United Construction Contractors Association ("UECA"), and we will not withdraw recognition from the Union, which represents our employees in the multiemployer bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL recognize the Union as the exclusive representative of our employees in the following appropriate multiemployer bargaining unit and bargain with the Union through UECA as our representative:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members* of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

EXPERT ELECTRIC, INC.

APPENDIX E

Abiele Contracting, Inc.
Able Electrical Contracting
Action Electrical Contracting
Alco Electric Co.
All Phase Electric
Accurate Electric
Alpha Maintenance & Electrical Corp.
Aly-Cine Electric Corp.

---

* This notice shall be posted along with the attached document (marked here as Appendix E) listing the 91 employers that constituted the certified multiemployer unit.

Atlas Electric Contractors, Inc.
Wm. Beeferman, Inc.
Bernard Pasquale, Inc.
P. Barry Contractors, Inc.
Bisantz Electric Co., Inc.
Blake Electric Contracting Co., Inc.
Boys Electric
Bran Electric
Ralph Borelli Electric
C. B. Electric
C & L Electric, Inc.
Chapman Contracting Co.
Colony Electric Company
Con Tech Electric Service Co., Inc.
Cotroneo & Marino's United Electric Co., Inc.
County Wide Electric
Cunardi Electrical Contracting Contracting, Inc.
Dececk & Leonard, Inc.
DiFrancia Electric, Inc.
Eaton Electric, Inc.
Eugene Iovine, Inc.
Expert Electric, Inc.
Falcone Electric Corporation
Feola Electric, Inc.
Ferguson Electric, Inc.
Ferrara Electric, Inc.
G & R Electrical Contracting, Inc.
Gateway Electrical Contracting Corp.
George F. Kolsch, Inc.
Gilston Electric Contracting Corp.
Global Electrical Contractors, Inc.
Granna Electric, Inc.
Heller Electric Contractors
Hunts Point Electric Corp.
Interphase Electrical Contractors Corp.

J. K. Electric
Jade Electric
Kew Electric Co.
L & H Power, Inc.
La Rene Electrical Co., Inc.
Lesil Reliable Electric Co., Inc.
Lipco Electric Co.
Lisa Electrical Inc.
Lobello Electric
M.P.E. Electrical Contracting Corp. d/b/a Star Electric
Maximum Electrical Contracting Corp.
Milad Contracting Corp.
Mondl Electric Co., Inc.
Neon Images
Norlin Electric
M. Ostroff Electric, Inc.
Taglifaferro & Sons Electrical Co. d/b/a Northern Electric
North American Neon d/b/a North American Maintenance Ozone Electric
P.T.R. Electric Corp.
Pantel Contracting Corp.
Paul Mock, Inc.
Petri Electric Corp.
Point Electric Ltd.
Positive Electrical Associates, Inc.
Preferred Contracting, Inc.
Raymour Electric Company
Robert E. Burden Electrical Contractors
Schneider Electric Company
Seymour Electric Service, Inc.
Solar Electrical Company
Square Electric Co., Inc.
Standard Maintenance, Inc.

Star Brite Electric Corp.
Suriano Electric
T. Reilly Electrical Corp. f/k/a Modica & Reilly Electric Corp.
T & A Electrical Contractors
T & J Electrical Contractors
Tap Electrical Contractors Service
Tocs Electrical Contracting Corp.
Tri-Town Electric Corp.
Triac Electric Corp.
V & R Electrical Contractors, Inc.
Valquest Contracting Co., Inc.
Vintage Electric Corp.
W.P.C. Electric
W. T. Hickey Corp.
Willmont Electric Corp.

Elias Feuer, Esq., for the General Counsel.
Richard Brook and *Patricia Palmeri, Esqs.*, of Mineola, New York, for Local 3.
Steven Goodman and *Bonnie Parente, Esqs. (Jackson, Lewis, Schnitzler & Krupman, Esqs.)*, of Woodbury, New York, for Respondent United Electrical Contractors Association and certain Individual-employer members of the Association.
James Frank and *David Prager, Esqs. (Phillips Nizer Benjamin Krim & Ballon, LLP)*, for Respondent Expert Electric.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. On February 23, 1993, Local 3, International

Brotherhood of Electrical Workers, AFL–CIO (Local 3) was certified by the Board following an election in which Local 3 received more votes than Local 363, Teamsters, which had represented the United Electrical Contractors Association (UECA's) employees for approximately 20 years. The certified unit is as follows:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

UECA refused to bargain in order to test the certification and on October 29, 1993, the Board granted the General Counsel's motion for summary judgment and directed that UECA bargain with Local 3. *UECA,* 312 NLRB 1118 (1993). On September 2, 1994, the Second Circuit Court of Appeals enforced the Board's bargaining order.

Based upon a charge filed on April 23, 1998 by Local 3, a complaint was issued on July 16, 1998 in Case No. 29–CA–21967 against Expert Electric, Inc. (Expert), which alleged that on about April 21, 1998, Expert withdrew its recognition of Local 3, thereby refusing to bargain with Local 3 as the exclusive collective-bargaining representative of its employees who were included in the unit set forth above. The complaint further alleged that Expert withdrew recognition from Local 3 notwithstanding that it has

been an employer-member of UECA and that Local 3 has represented and continues to represent Expert's employees in the multiemployer unit set forth above. Expert denied the material allegations of the complaint and asserted certain affirmative defenses which will be discussed below.

On November 10, 1998, a charge was filed by Local 3 in Case 29–CA–22339 against UECA. The charge alleged that since about September 23, 1998, UECA failed and refused to negotiate with Local 3 because UECA has refused and refuses to negotiate "as a group" as required by the decision of the Board and the Second Circuit Court of Appeals. On April 28, 2000, a complaint was issued against "United Electrical Contractors Association a/k/a United Construction Contractors Association (UECA) and its individual—employer members (see Appendix)" which alleged that on about June 11, 1998, UECA verbally withdrew recognition from Local 3 as the exclusive collective-bargaining representative of its employees in the unit set forth above, and since that date Respondents have refused to meet and bargain with Local 3 on a multiemployer basis as the exclusive collective-bargaining representative of the unit employees.

UECA filed an answer and a second amended answer to the complaint. Its first answer admitted service of the charge upon it, but its second amended answer denied knowledge of the service of the charge upon it and upon any of the individual employers set forth in the appendix.

The answer denied the material allegations of the complaint and asserted certain affirmative defenses which will be discussed below.

A motion to dismiss and a motion for summary judgment regarding Case No. 29–CA–22399 were filed with the Board. They relate to matters alleged in the affirmative defenses asserted by UECA and Expert. On September 5, 2000, the Board denied the motions on the ground that they raise genuine issues of material fact which would better be resolved after a hearing before an administrative law judge. The matters raised in the motions are discussed herein. On eight days in October, 2000, a hearing was held before me in New York, NY.[1]

Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the briefs filed by counsel for the General Counsel, Local 3, UECA, Expert, and Square Electric Co. Inc., I make the following

---

[1] General Counsel made a motion to consolidate these cases with Case Nos. 29–CA–18784 and 29–CA–21456. I rejected the motion. Extended discussion on the record sets forth my reasons. Moreover, in view of my decision herein that the extended certification year cannot be used to provide jurisdiction over the individual-employer members of UECA which is General Counsel's main reason for the motion, the motion therefore is rendered moot.

FINDINGS OF FACT

I. JURISDICTION

The complaints allege and I find based upon the testimony of UECA director Patrick Bellantoni that UECA has been an organization composed of various employers engaged as electrical contractors in New York State, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations including Local 3.

The complaints also allege and UECA admits that at all times material it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. UECA's second amended answer admits that all the employers set forth in the appendix are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. Expert admits that it is a New York corporation engaged in electrical contracting services, and that during the past year it has performed services valued in excess of $50,000 for various enterprises located in New York State, each of which enterprises is directly engaged in interstate commerce and meets a Board standard for the assertion of jurisdiction, exclusive of indirect inflow or indirect outflow.

UECA and Expert admit that Local 3 is a labor organization within the meaning of Section 2(5) of the Act.

II. CASE NO. 29–CA–22399

A. Procedural Issues

Due Process and Laches

The charge was served only upon UECA and not upon its individual-employer members. The complaint, which was issued 1–1/2 years after the charge was filed, was served upon UECA and the individual-employer members of UECA.

General Counsel correctly argues that UECA was charged with representing its members in the underlying refusal to bargain litigation before the Board and the Second Circuit Court of Appeals, and that it has acted in behalf of its individualemployer members in representing them during negotiations. However, those facts cannot cure a fundamental procedural defect in this case.

Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ."

Here, the alleged unfair labor practice occurred on September 23, 1998, the charge was filed on November 10, 1998, and the complaint was issued 1–1/2 years later on April 28, 2000. In *Sewanee Coal Operators Assn.*, 167 NLRB 172, fn. 4, and at 177 (1967), the Board held that it has "regularly refused to hold that participation in a multiemployer

bargaining unit or in a multiemployer contract constitutes one participant the agent of another for the purpose of accepting service." The Board found that the failure to serve certain members of a multiemployer unit with charges within the Section 10(b) period required dismissal of the complaint as to them.[2] See *George D. Auchter Co.*, 102 NLRB 881, 885 (1953), where the Board dismissed a complaint against an association which was not timely served with a charge alleging that an individual employer refused to employ an individual.

General Counsel cites *Southwestern Colorado Contractors Assn.*, 153 NLRB 1141, 1147 (1965) in support of his argument that proper service has been made upon the individualemployer members of UECA. In that case, an appendix was attached to the charge in which the individual respondentmembers of the association were named, and the Board found timely service of the charge upon the individual respondents even though the charge did not name the individual employers. Here, of course, the individual-employer members were not served with the charge and were not named in any appendix attached to the charge. They were, however, served with the complaint which named them as individual employerrespondents, but that was 1½ years later.

---

[2] General Counsel's attempt to distinguish *Sewanee* is unavailing. The additional facts in that case that the association was informal and had dissolved prior to the start of the Section 10(b) period when the violation occurred are dicta which do not modify the basic holding in the case, that charges must be served upon the charged party within the Section 10(b) period.

I accordingly cannot find that the charge was timely filed against the individual-employer members of UECA.

On September 24, 1994, the Second Circuit Court of Appeals enforced the Board's order requiring bargaining by UECA. Bargaining began on October 24, 1994. The certification year began following affirmance of the Board's bargaining order and when bargaining in good faith began. Accordingly, the certification year began on October 24, 1994. *Van Dorn Plastic Machinery Co.*, 300 NLRB 278, 279 (1990).

General Counsel argues, in the alternative, that the certification year must be extended, and as extended, service of the complaint upon the individual-employer members was timely. In related Case 29–CA–18784 I found that the certification year should be extended because of the unfair labor practices engaged in by Respondents, specifically the failure to furnish information and the delay in furnishing information to Local 3. General Counsel reasons from this that since the certification year had not yet expired on April 25, 2000 when the complaint here was served upon the individual-employer members, service of the complaint upon them constituted timely service. I do not agree. First, extension of the certification year is a remedy for unfair labor practices and cannot serve as the basis for providing jurisdiction over the individual-employer members of Respondent when timely service of the charge had not been initially made. Further, service of the complaint outside the Section 10(b) period cannot provide jurisdiction over those

respondents regardless of whether the certification year has been extended.

I accordingly shall order that the complaint in Case 29–CA–22399 against all the individual-employer respondents be dismissed for failure of timely service of the charge upon them, and the Order in this case shall apply to UECA only.[3]

With respect to the defense that the complaint is barred by the failure to obtain jurisdiction over and join all necessary parties, General Counsel stated that the complaint was served upon only 58 employers who he determined were still in business. The other employers who comprised the 91 original individual-employer members of UECA were not served because they were no longer in business. General Counsel further stated that the 91 UECA members were covered by the multiemployer certification, and not all of them are necessarily bound to bargain with Local 3, particularly since they are no longer viable as they are out of business.

I do not believe that this case must fail because all of the 91 original individual-employer members of UECA were not joined in this case,

---

[3] In the event that the Board does not agree with my decision to dismiss the complaint against the individual-employer members, it should be noted that I granted General Counsel's motion for summary judgment for failure to file an answer to the complaint against the following individual-employer members of UECA: Bisantz Electric, Bran Electric, C & L Electric, Con Tech Electrical, Falcone Electric, Feola Electric, Lisa Electric a/k/a YNR Electric, Milad Contracting, Mondl Electric, and Northern Electrical.

particularly in view of my holding that the complaint as to all of them must be dismissed for failure to timely serve the charge upon them.

B. The Facts

1. The Bargaining

As set forth above, in September, 1994, the Second Circuit Court of Appeals ordered UECA to bargain with Local 3. Bargaining began on October 24, 1994 and continued through June 11, 1998 comprising about 50 bargaining sessions. UECA was represented by counsel throughout the bargaining and in addition its bargaining team included certain individual-employer members of UECA. Local 3 was represented by Vincent McElroen, its business representative.

At about the first or second bargaining session on December 14, 1994, McElroen presented the first contract proposal of Local 3. It consisted of a list of 46 items (called a "table of contents" by UECA), with no details, which Local 3 sought to negotiate. At that meeting, Local 3 sought to have UECA agree to sign the contract that had already been negotiated between the New York Electrical Contractors Association (NYECA) and Local 3. That offer was rejected by UECA, which insisted upon the presentation by Local 3 of a full proposal containing economic and all other terms.

On January 26, 1995, Local 3 submitted a comprehensive proposal containing specific wages, hours and benefit proposals. That was the last

proposal submitted by Local 3. McElroen testified that UECA made "hundreds" of information requests concerning his proposal before it was prepared to make a complete proposal. Thereafter, McElroen made short, 1 or 2 page proposals in response to clauses that were being negotiated.

In March, 1995, UECA made a partial written proposal to Local 3, and a further written proposal in July. After considerable bargaining, one year later, in June, 1996, UECA presented its complete written proposal. In about June, 1996, Local 3 asked UECA to sign a recognition agreement which stated that UECA agreed that Local 3 was the certified bargaining representative. McElroen explained that he offered the recognition agreement in an effort to "move the negotiations along."

In August and September, 1996, McElroen advised UECA that Local 3's proposal of January, 1995 was no longer on the table because UECA's counterproposal of June, 1996 rejected Local 3's proposal in its entirety. Accordingly, Local 3 withdrew its proposal when UECA presented its counterproposal. At hearing, McElroen explained that he told UECA counsel Steven Goodman that Local 3's proposal was withdrawn since the parties were working from UECA's proposal. On January 16, 1997, McElroen proposed that UECA sign an interim agreement in the same form as those which were signed by certain individual-employer members of UECA.

McElroen testified that bargaining continued up until the last session in June, 1998. "Informal

negotiations" began in the second half of 1997 which included discussions of red-lining employees who were laid off so that they would be reemployed by the same employer, payments to the benefit funds of Locals 3 and 363, placement of foremen in the bargaining unit, payment of supplemental money to employees as opposed to payment into the funds, employment of shop stewards, hire of employees from outside Local 3, subcontracting, and the term of the contract. McElroen conceded that Local 3 made no written proposals as to any of these subjects.

2. The Alleged Withdrawal of Recognition by UECA

The complaint alleges that on about June 11, 1998, UECA verbally withdrew recognition from Local 3 as the exclusive collective-bargaining representative of its employees in the unit set forth above, and since that date Respondents have refused to meet and bargain with Local 3 on a multiemployer basis as the exclusive collective-bargaining representative of the unit employees.

UECA director Bellantoni presided over a meeting of the UECA board of directors in May, 1998. They discussed the facts that the association was "powerless" because the membership was reduced to about 22 active members, at least 20 employers had signed interim agreements with Local 3, company representatives were not attending meetings, and unionrequested information was not forthcoming from the employers. It was decided that it would be "futile" to continue negotiations as an association and that the individual employers should

negotiate with Local 3 on an individual basis. He stated at the hearing that once the member-employers signed interim agreements they no longer cooperated with UECA in supplying requested information. The UECA board also discussed that after Local 3 had made its initial proposals it withdrew them and had no current proposals on the table for 2 years. Bellantoni told the UECA board that he believed that Local 3 was not bargaining in good faith because it was making absurd requests for information, for example, when UECA proposed that employees be disciplined for just cause, Local 3 requested that each of the 91 employers in UECA provide its definition of just cause. According to Bellantoni, in May, 1998, there were only perhaps 22 active employers in UECA.

McElroen testified that at a scheduled negotiation session on June 11, 1998, UECA attorney Goodman told those assembled that due to disaffiliation, loss of members and other reasons, UECA was "dropping out of negotiations" with Local 3 and no longer represented any employers who were part of the Boardcertified unit. McElroen asked if the latest UECA bargaining proposal was still on the table, and Goodman replied that negotiations have broken off so he believed that it was no longer on the table. Goodman added that he would continue to represent UECA with respect to outstanding unfair labor practice charges and certain individual members of UECA. Goodman suggested that Local 3 contact the individual employers and suggest that they engage in individual bargaining with Local 3.

McElroen further stated that Goodman gave as reasons for UECA's withdrawal from negotiations, the fact that a number of individual employers signed interim agreements with Local 3, others had not responded to UECA, and others, such as Expert, had retained separate attorneys to represent them in matters pending at the Board. McElroen conceded that Goodman may have told him that UECA believed that it was unable to continue bargaining because of the number of employers who had signed interim agreements with Local 3.

The interim agreements are separate agreements that Local 3 signed with UECA members during the course of the bargaining with UECA.

Local 3 signed a total of 19 interim agreements with individual- employer members of UECA. Three were executed in 1991, prior to the Board's certification of Local 3.[4] Two were signed in 1994 before to the beginning of multiemployer negotiations. [5] Eleven were signed during negotiations from 1995 through June, 1998,[6] and the final 3 were signed in 2000.[7]

---

[4] Maximum Electric, Milad Contracting, and Positive Electric.

[5] Accurate Electric and Ferguson Electric.

[6] Vintage Electric, Colony Electric, Lipco Electrical, Total Electrical, G & R Electrical, Pantel Contracting, County Wide Electric, All Phase Home Power, Kew Electric, Impulse Enterprises and V & R Electrical.

[7] Gilston Electrical, Farica Electrical and Action Electric.

The interim agreements provide that the employer recognizes Local 3 as the representative of its employees as described in the February 23, 1993 certification. The interim agreements also express the intention and desire of the parties that Local 3 will be able to secure an agreement with UECA "as soon as possible" but they are entering into the interim agreement "because a Union-UECA Agreement is not likely to be achieved in the immediate future." Each interim agreement provided that the wages, benefits and other terms and conditions of employment of the employees would be the same as the current collective-bargaining agreement between NYECA and Local 3. In this connection, Local 3 and NYECA, an organization which represents electrical industry employers in multiemployer bargaining, have had a collective-bargaining relationship for many years. The interim agreements provide that they shall terminate upon the effective date of a UECA—Local 3 contract, and that the parties to the interim agreement shall execute the UECA— Local 3 contract. Certain interim agreements exempt the employer's employees from participating in the furlough program for 2 years.

In addition, the interim agreements waived the 6-month waiting period for employees' eligibility for medical coverage. UECA director Bellantoni testified that the employers which signed interim agreements failed thereafter to cooperate with UECA's negotiation efforts in providing information requested by Local 3. Bellantoni's estimate that 50% of the employers covering 300 employees eventually signed interim agreements with Local 3 does not

agree with the facts inasmuch as the evidence shows that only 19 of the original 91 employers, or the 58 employers who General Counsel has identified as still being in business, have signed interim agreements.

McElroen testified that the purpose of the interim agreements was to meet the needs of certain employers who were part of the UECA unit but were frustrated with the negotiation process and sought an agreement with Local 3. McElroen stated that in all cases the individual employers initiated the request for an interim agreement, and sought an exemption from the furlough arrangement in order to maintain their employees' morale and maintain their current work force. He further stated that the intent of the agreements was to provide employers and employees with the full benefit of the NYECA agreement as an interim measure until a contract was reached between Local 3 and UECA.

Following the June 11 session, on August 28 McElroen wrote to Goodman, advising that he believed that UECA's failure to continue to negotiate with Local 3 may be in contempt of the Circuit Court's Order. He asked to resume negotiations, offering certain dates for bargaining. On September 23, Goodman wrote that "as I advised you on June 11, 1998, the UECA is no longer representing employers in contract negotiations with Local 3 IBEW." The letter included a list of 22 UECA employers who advised Goodman that they were prepared to negotiate individually with Local 3 and that he (Goodman) was authorized to represent them at negotiations. Goodman asked that McElroen

contact him so that individual negotiations could be held on behalf of those employers.

On September 24, McElroen sent letters to all 91 employermembers of UECA, advising them that they were obligated to negotiate with Local 3 pursuant to the Second Circuit's Order and that "failure by the employer group to continue to negotiate with Local 3 may constitute contempt" of that Order. The letter further advised that "even though UECA has withdrawn from these negotiations, this withdrawal does not eleviate [sic] the employer members of UECA from their obligation to bargain as a group. The letter advised that the Court's Order "does not permit individual bargaining (unless it is for an interim agreement) and . . . requires group bargaining on behalf of the entire group by their designated negotiator." Finally, the letter suggested that the employers "convene for the purpose of selecting a committee to negotiate on behalf of the group."

In early October, 3 UECA contractors, V & R, Lipco and Milad sent a letter to the other individual-employer members asking that a meeting be held to organize a new association for the purpose of completing negotiations with Local 3 and executing a contract with that union. Those 3 employers all had signed interim agreements with Local 3. Bellantoni was not invited to the meeting but he and UECA counsel Goodman attended. Goodman represented about 21 individual-employer members at that time. No new multiemployer bargaining group emerged from this meeting or any subsequent meeting.

3. UECA's affirmative defenses

In addition to UECA's Section 10(b) defense, discussed above, it asserts that its conduct was privileged or permissible based upon the conduct of Local 3 at and during negotiations, and that Local 3 fragmented the collective-bargaining unit by engaging in separate collective-bargaining negotiations with other members and/or former members of UECA and by signing separate collective-bargaining agreements with other former members of UECA.

(a) Alleged bad-faith bargaining

UECA alleges as a defense to its actions that Local 3 has not engaged in good-faith bargaining with UECA by failing to make a contract proposal for more than 1 year, and engaged in other bad faith conduct.

UECA argues that Local 3 engaged in bad faith bargaining by refusing to make bona fide contract proposals, withdrawing its only proposal, refusing to offer any counter proposals and making unreasonable demands for information which it knew UECA was incapable of producing. I disagree.

I cannot find that Local 3 has engaged in bad faith bargaining. More than 50 bargaining sessions were held in nearly 4 years of bargaining. In 1998 bargaining had been ongoing and certain proposals and discussions, undertaken in the second half of 1997, set forth above, were still ongoing. Thus "red-lining" employees, payments to the benefit funds of

Locals 3 and 363, placement of foremen in the bargaining unit, payment of supplemental money to employees as opposed to payment into the funds, employment of shop stewards, hire of employees from outside Local 3, subcontracting, and the term of the contract were still the subject of discussions in 1998. Thus, although Local 3 withdrew its complete written proposal in June, 1996 it continued to bargain with respect to UECA's proposal and made the proposals and engaged in negotiations as set forth above thereafter.

Local 3 initially sought to have UECA sign a contract that had already been agreed to by NYECA. That was rejected by UECA and Local 3 submitted a "table of contents" as to the areas it wished to negotiate. When that was unsatisfactory to UECA, it offered a complete, comprehensive contract proposal containing detailed demands relating to economic and noneconomic matters. Thereafter, Local 3 made short 1 or 2 page proposals in response to the provisions that were being negotiated. After UECA presented its counterproposal, the parties then bargained from that proposed agreement. Although Local 3 technically "withdrew" its original contract proposals in June, 1996, nevertheless bargaining continued for 2 years thereafter. "Informal" negotiations included discussions concerning material matters.

UECA offers as examples of Local 3's misconduct the union's insistence that information concerning UECA's proposal relating to discharge for just cause be obtained from the 91 original individual-employer members of UECA when it

knew that such information was unobtainable. UECA argues that Local 3 engaged in such conduct in order to prolong the negotiations while at the same time "break UECA" by entering into interim agreements with its members and taking its employees and putting them into shops covered by a Local 3 contract.

The Board has held that a union's bad faith bargaining may, in certain circumstances, excuse an employer's refusal to bargain. *Chicago Tribune Co.*, 304 NLRB 259, 260 (1991).

I cannot find, that under these circumstances, where bargaining continued in 50 sessions over 4 years, that Local 3 engaged in bad faith bargaining. Nor can I find that any of the other conduct alleged by Respondents, considered separately or together, constituted bad faith on the part of Local 3 which permitted Respondents to withdraw from multiemployer bargaining.

(b) Fragmentation of the bargaining unit

UECA and Expert argue that Local 3's actions in obtaining interim agreements from UECA employers while at the same time engaging in multiemployer bargaining with their representative undermined UECA's negotiating position and fragmented the bargaining unit so as to render continued multiemployer bargaining futile, and that such conduct constitutes sufficient unusual circumstances to permit their withdrawal from bargaining with Local 3.

In addition, UECA contends that the employers who signed such interim agreements failed to cooperate with UECA in negotiations and withdrew their support for UECA and caused their termination of membership in that group.

In *Retail Associates*, 120 NLRB 388, 395 (1958), the Board held that where multiemployer bargaining negotiations have begun, withdrawal of an employer from such negotiations is not permissible absent unusual circumstances. The "unusual circumstances" exception has historically been limited to only the most extreme situations. *Chel LaCort*, above.

"Unusual circumstances will be found where an employer is subject to extreme financial pressures or where a bargaining unit has become substantially fragmented." *Charles D. Bonanno Linen Service v. N.L.R.B.*, 454 U.S. 404, 411 (1982), or "when the multiemployer unit has dissipated to the point where the unit is no longer a viable bargaining entity." *Chel LaCort*, 315 NLRB 1036 (1994). In *Bonanno*, the Court stated that where interim agreements executed by a union in multiemployer bargaining were "temporary: both the union and the employer executing the interim agreement were bound by any settlement resulting from multiemployer bargaining [then] the signers maintained a vested interest in the outcome of final union-association negotiations, the multiemployer unit was neither fragmented nor significantly weakened and unilateral withdrawal was not justified." *Bonanno,* at 414. The Court noted that by executing such interim agreements the employers

have an "equivalent stake" in the outcome of multiemployer negotiations because the final contract would apply to all employers, including the signers of the interim agreements.

In contrast, the Court noted that a union which entered into "separate agreements that will survive unit negotiations . . . effectively fragmented and destroyed the integrity of the bargaining unit as to create an 'unusual circumstance' under *Retail Associates*." *Bonanno*, at 414–415.

Here, all the interim agreements entered into between Local 3 and the individual-employer members were "temporary" in nature. They all expressly state that they shall terminate upon the effective date of a UECA—Local 3 contract, and that the parties to the interim agreement shall execute the UECA—Local 3 contract. Accordingly, the signers maintained a vested interest in the outcome of final union-association negotiations, and an "equivalent stake" in the outcome of multiemployer negotiations because the final contract would apply to all employers, including the signers of the interim agreements. The interim agreements executed here thus conform to the Court's view that they "tend to deter rather than promote unit fragmentation since they preserve a continuing mutual interest by all employer members in a final association-wide contract. *Bonanno,* 454 U.S. at 415–416

Here, only 19 of the original 91 employers, or the 58 employers who General Counsel has identified as still being in business, have signed interim agreements. Because such a small number of

employers have signed interim agreements it cannot be said that the unit has been dissipated to such an extent that the multiemployer unit is no longer viable. The Board has found no fragmentation where 40 of 65 of a multiemployer association's members signed interim agreements. *Joseph J. Callier*, 243 NLRB 1114, 1115 (1979).

Respondents point to the interim agreements with V & R Electrical and Impulse Enterprises, both signed in August, 1997, which appear to be separate agreements and not true interim agreements.[8] Both interim agreements contain a Memorandum of Understanding which provide that it "shall survive the expiration of the interim agreement and shall remain in effect under any Union/UECA Association agreement reached in accordance with paragraph 6 of the interim agreement." That paragraph provides that the employer agrees to be bound by any agreement reached between Local 3 and UECA, and that the interim agreement terminates upon the effective date of such UECA contract.

The Memorandum of Understanding contains provisions not included in the standard interim agreement, such as the employer is permitted to complete jobs in progress "in accordance with the way . . . the employer bid the individual jobs." The Memorandum also provides that employees are exempt from participation in the furlough program for 2 years. In addition, the Memorandum contains a

---

[8] At the time of the execution of the interim agreements, there was some issue as to whether Impulse was an alter ego, successor or assign of V & R.

provision which states that if the "survival" clause is determined by the Board to be inconsistent with the proper scope of an interim agreement, it shall be null and void, and Local 3 and the employer shall meet to discuss the effect of such a determination.

McElroen testified that such Memoranda were entered into in order to address certain issues the employers raised. The employers sought to be permitted to engage in certain work practices which were prohibited in the NYECA contract to which they were bound pursuant to the interim agreement pending execution of a Local 3—UECA contract. McElroen stated that the employers wanted assurances that those work practices that they had been doing on those specific jobs would remain in effect because they had bid those jobs in the belief that they could continue their work practices through the term of the job contract.

I do not believe that the Memorandum of Understanding detracts from a finding that the interim agreements were intended to be temporary agreements which would not survive the execution of a UECA contract. McElroen's testimony establishes that the Memorandum addressed particular needs of companies which had a legitimate interest in finishing outstanding work based upon the methods and practices it expected to continue. The execution of the standard interim agreement would have caused the companies to agree to the NYECA contract which prohibited the methods of work performed on those jobs. Thus, the Memorandum addressed a limited need for the work to be

continued and completed through the execution of the UECA contract.

The cases cited by Respondents, *Typographic Service Co.*, 238 NLRB 1565 (1978) and *Connell Typesetting Co.*, 212 NLRB 918 (1974), are inapposite. In *Typographic*, the union engaged in individual bargaining with employers, and offered agreements which differed from each other. The Board held that the principles underlying the purpose of multiemployer bargaining such as uniform rates of pay, hours and working conditions for employees in the multiemployer unit were undermined by the union's different contracts with the individualemployer members of the association, and such conduct permitted withdrawal of those employers from the unit.

Here, the facts are completely different. The interim agreements executed between Local 3 and the employers were the same. They all provided that the terms of the NYECA contract would apply until the execution of a Local 3-UECA contract, at which time the interim agreements would terminate and all employers would be bound by the UECA contract.

In *Connell*, the Board found no violation where employers withdrew from the multiemployer unit. The number of employers who had signed interim agreements, 23 of 36 in the unit, was so great as to lead to a finding that the unit had been so reduced in size and strength that it was no longer viable. In contrast, here only 19 of the original 91 employers, or the 58 employers who General Counsel

has identified as still being in business, have signed interim agreements.

I accordingly reject Respondents' argument that the unit has been fragmented to an extent that multiemployer bargaining is futile.

III. CASE 29–CA–21967

A. The Facts

During the course of the bargaining, Expert sent a letter dated April 21, 1998 to Local 3 which stated:

> On April 15, 1998, Expert Electric received a petition signed by a majority of its employees which states: "We do not want to be represented by I.B.E.W. Local Union #3. We withdraw Local 3 authority to bargain on our behalf." Based upon this objective evidence of the Union's loss of majority support and pursuant to the National Labor Relations Act, Expert Electric must and hereby does withdraw its recognition of Local 3 as the collective bargaining representative of its employees. We trust that you will join us in respecting and abiding by our employees' clearly expressed desires.

McElroen testified that prior to receiving that letter he had not received any notice from Expert or UECA advising that Expert wished to withdraw from multiemployer bargaining. Immediately upon receipt of the letter, Local 3 filed the instant charge,

alleging Expert's unlawful withdrawal of recognition of Local 3.

The events leading up to the April 21 letter are as follows.

Peter Castranova, an employee of Expert, stated that his fellow workers discussed the possibility of not having Local 3 as their bargaining representative. Their reasons included their desire to have apprentices working with them. Local 3's apprenticeship program was in effect for the employers covered by the NYECA contract and those employers who signed interim agreements with Local 3 could therefore participate in the apprenticeship program. According to Expert vice president John Micelotta, Expert applied to the New York State Department of Labor for a registered apprenticeship program, but was rejected because Local 3 had to give its approval and Local 3 refused. In contrast, under the former Local 363 contract, apprentices were employed on Expert's job.

Another concern was Local 3's mandatory furlough or workshare program in which employees are subject to mandatory layoff in the event of low employment in the industry. In such a case, the employee placed on furlough is replaced by another worker who was unemployed.

Castranova stated that his brother John called the Board and prepared a petition, the text of which is set forth in Expert's letter above. Peter and John, who are second cousins of John Micelotta, solicited signatures at their worksites. Peter stated

that he did not discuss the petition with Expert's officials before he circulated it. Similarly, John Micelotta testified that he had no conversations with the men before they presented the petition to him. Nine employees signed the petition, and John Castranova gave the signed petition to John Micelotta.[9]

Employee Joseph Von Nessen testified that he signed the petition voluntarily, and he saw other employees sign it freely. Employee Frank Beni stated that when first asked to sign the petition by John Castranova he refused, saying that there was turmoil between Locals 3 and 363 and he did not want to "rule out any future options." Beni stated that during the next week he again refused to sign the petition and was told by Peter Castranova that he was either "with us or against us and you know what happens then." An argument ensued. About 1 week later, John apologized for Peter's conduct and again asked him to sign. Beni signed since he believed that he had "no other choice." Employee Shaun Abrams entered a trailer at a jobsite and was told by an employee "o.k. we've got to sign this paper." Abrams signed. Also present at that time was Ray Rinaldi, another employee of Expert. Abrams testified that although he signed the petition he nevertheless wanted to continue to be represented by Local 3. He stated that he signed the petition because he believed that "probably not

---

[9] The signatories are John and Peter Castranova, Ray Rinaldi, Joseph Von Nessen, Shaun Abrams, Eric Lugo, Jerry Garafolo, Frank Beni and Robert Cavazzini.

signing it might cost me my job." However, he stated that no one forced him to sign.

About one month later, Expert's employees, including Abrams and Beni signed a petition to be sent to Teamster International President Hoffa. The petition, which was circulated by a fellow employee, stated that they became members of Local 3 by "mistake" and asked Hoffa to intercede in their behalf to reinstate their membership in the Teamsters union.

Employee Von Nessen testified that during his work at the Rikers Island project, John Micelotta was the project manager and Rinaldi was in charge of the day to day work. Rinaldi, who was a member of Local 363, reported to Micelotta and the assistant project manager. Von Nessen stated that Rinaldi had no authority to hire or discharge.

Ernesto Graziano worked for Expert for 7 years. He testified that Rinaldi "ran" the Rikers Island job as the foreman, and did not work with hand tools at that job. He stated that he was told by Rinaldi that he fired employee Robert Antonio. Antonio told Graziano that he called in sick and was discharged by Rinaldi. Graziano further stated that as a certain job was being completed Rinaldi discharged several workers, and Graziano was told by one worker that he had just been fired by Rinaldi. Graziano also stated that Frank Micelotta hired him and also makes the decision to discharge employees.

B. Expert's Affirmative Defenses

Expert's material affirmative defenses in addition to those discussed above[10] are that (a) it was justified in withdrawing recognition based upon the decertification petition presented to it by its employees (b) UECA expelled Expert from membership in UECA and thereafter ceased to represent Expert in negotiations with Local 3 (c) Local 3 has not engaged in good faith bargaining with UECA by seeking to deprive employees of benefits they presently receive (d) Local 3 and UECA reached an impasse in collective-bargaining negotiations prior to April, 1998 and (e) Local 3 threatened retaliation against employees of Expert who were formerly members of Teamsters Local 363 regarding job assignments and pension benefits.

1. The decertification petition

The complaint alleges that on about April 21, 1998, Expert withdrew its recognition of Local 3, thereby refusing to bargain with Local 3 as the exclusive collective-bargaining representative of its employees who were included in the unit set forth above. The complaint further alleges that Expert withdrew recognition from Local 3 notwithstanding that it has been an employer-member of UECA and that Local 3 has represented and continues to

---

[10] Certain affirmative defenses raised by UECA and discussed above such as fragmentation of the unit and bad faith bargaining by not making a contract proposal for more than 1 year, are the same as those raised by Expert. A repetition of that discussion is not necessary.

represent Expert's employees in the multiemployer unit set forth above.

General Counsel argues that Expert was not entitled to honor the petition presented to it since it was part of the multiemployer unit. He argues, alternatively, that Ray Rinaldi is a supervisor and should not be counted toward the number of Expert's employees who signed the petition. Local 3 argues that the evidence establishes that Abrams and Beni were coerced into signing the decertification petition.

Contrary to General Counsel and Local 3, I find that there is no evidence that the decertification petition was tainted by improper conduct. The fact that the petition was prepared and circulated by the Castranovas who are relatives of the Micelottas does not establish that they are agents of Expert's officials or that company officers were aware of their activity. I similarly cannot find that Peter Castranova threatened Beni. Beni voluntarily signed the petition after an apology was made, and 1 month later signed a petition asking Teamster president Hoffa to help him become a member of the Teamsters union. There is some question as to whether Rinaldi is a statutory supervisor. Even assuming that he is a supervisor and cannot be counted toward the number of petition signers, nevertheless a total of 8 out of 10 employees signed the petition.[11]

---

[11] *Tyson Foods, Inc.*, 311 NLRB 552, 556 (1993) and *Lomasney Combustion, Inc.*, 273 NLRB 1241 (1984), cited by General Counsel are inapposite. In both cases, employer officials played active roles in the decertification effort. Such evidence is absent here.

I reject Expert's argument that it was entitled to withdraw recognition from Local 3 based upon the decertification petition presented to it. Respondent's alleged good faith doubt of the majority status of Local 3 "predicated solely on the desires of its own employees does not justify or excuse its untimely withdrawal from a multiemployer bargaining unit." Since the appropriate unit is the multiemployer unit, the fact that a majority of Expert's employees withdrew their support from Local 3 is immaterial, and did not permit Expert to withdraw from the multiemployer unit. *Callier*, above, at 1118; *Wm. Chalson & Co., Inc.*, 252 NLRB 25, 33 (1980). In addition, no question has been raised concerning Local 3's majority status among the employees in the multiemployer unit.[12]

2. Expert's expulsion from UECA

According to Patrick Bellantoni, the director of UECA, Frank Micelotta who attended UECA strategy and negotiation sessions and was a member of the UECA board, was continuously disruptive of the meetings. It appears that Micelotta disagreed with the rest of the board regarding the direction of the negotiations—he disagreed with UECA's willingness to grant concessions to Local 3, refused to provide further information to Local 3, and wanted his own attorney to handle non-labor UECA

---

[12] In this regard I note that Local 3 has sought to have employees of the individual-employer members of UECA sign pledge cards during the bargaining. However, inasmuch as Local 3 already represents a majority of the employees in the unit, such affirmation of representation does not detract from such representation.

matters. Bellantoni explained that nothing could be accomplished at meetings where Micelotta was disruptive.

Bellantoni testified that in October, 1997, Expert was expelled from UECA because of Frank Micelotta's behavior. Bellantoni stated that during negotiations in early 1998, Expert's remittance reports were not provided to Local 3. McElroen asked for Expert's reports and Bellantoni replied that UECA no longer represents Expert. It should be noted that UECA's notes of the negotiations contain no express statement that Bellantoni made that comment to Local 3, and McElroen denied being told by anyone that Expert had been expelled from UECA or that Expert wanted to withdraw from multiemployer bargaining. Further, Local 3 never consented to Expert's withdrawal from the multiemployer unit. In addition, McElroen testified that following Expert's letter to Local 3 advising that employees had signed a decertification petition, he asked UECA counsel Goodman about it. Goodman told him that he believed that Expert may have been expelled from UECA. McElroen replied that that was the first time he heard that, and then requested documents regarding expulsion of UECA members. Those documents were never provided.

John Micelotta testified that he did not know why UECA expelled Expert, but conceded that they disagreed concerning the management of UECA, negotiation tactics and choice of attorneys. On February 4, 1998, Bellantoni sent a letter to Expert which stated that UECA "herewith expels you from membership. The Association will no longer allow

you to attend Association meetings or become involved in matters involving the Association or its members."

In *Retail Associates*, 120 NLRB 388 (1958), the Board held that an employer's withdrawal from a multiemployer bargaining unit after bargaining has begun would not be permitted except upon mutual consent absent unusual circumstances.[13]

First, it is clear that Expert was a member of UECA and actively participated in negotiations until its alleged expulsion in October, 1997. However, I cannot find that Local 3 gave its consent to Expert's withdrawal from the unit by expulsion. I credit McElroen's testimony that he was not advised that UECA had expelled Expert and he had not given the consent of Local 3 to such expulsion. No credible evidence has been presented which indicates otherwise. Immediately upon receiving Expert's April 21 letter, Local 3 filed the instant charge.

Further, Expert's actions following its expulsion are inconsistent with a timely consensual withdrawal from the unit. Thus, its letter of April 21, 1998 is instructive. The letter states that based upon the decertification petition of its employees it "hereby does withdraw its recognition of Local 3 as the collective-bargaining representative of its employees. We trust that you will join us in respecting and abiding by our employees' clearly expressed desires." If Expert had been expelled from

---

[13] The "unusual circumstances" exception is discussed above.

UECA months before in October, 1997, and such fact was communicated to Local 3, why was the letter necessary? The letter was in effect a request that Local 3 agree with it that its employees were no longer interested in representation by Local 3 when, according to Expert, Local 3 had acquiesced in Expert's removal from the multiemployer unit 2 months before in early 1998.

The Board has held that an employer by voluntarily refusing to pay dues to a multiemployer association thereby causing its own expulsion from the group cannot thereby escape its bargaining obligation with the multiemployer unit. *Roberts Electric Co.*, 227 NLRB 1312, 1317 (1977). If the holding was otherwise, employers may be tempted to fail to pay dues in order to avoid being bound to multiemployer bargaining. The same may be said of Expert's expulsion. Although Expert was apparently expelled because of Frank Micelotta's conduct toward UECA, it appears that Expert could have substituted John or another agent or official as the bargaining representative. There apparently were no complaints about John's behavior during UECA's strategy sessions. Accordingly, Expert's own acts (Frank's demeanor) caused its expulsion.

I accordingly cannot find that Expert properly withdrew from the multiemployer bargaining unit. Its expulsion from UECA did not constitute a proper withdrawal inasmuch as no notice was given to Local 3, and that union did not consent to its expulsion or withdrawal. Accordingly, Expert remained a member of the multiemployer unit. Its employees therefore

remained a part of the overall unit consisting of the employees of the multiemployer group.

I accordingly find and conclude that Expert did not effectively withdraw from the multiemployer bargaining unit.

3. Local 3's alleged depriving employees of benefits

Regarding Expert's assertion that Local 3 sought to deprive employees of benefits they were then receiving, McElroen testified that he rejected UECA's request that the unit employees receive an interim wage increase until an agreement was reached. In this regard, he stated that employees of a large number of UECA employers in fact received wage increases because they worked on prevailing wage rate jobs. That rate is based upon the wage rate in the NYECA—Local 3 collectivebargaining agreement. Wage raises set forth in that contract resulted in a wage increase for UECA employees on their jobs. Nevertheless, Expert argues that employers who wanted to grant a wage increase were thereby induced to sign interim agreements McElroen conceded that he objected to the New York State Department of Labor approving an apprentice program for UECA employers unless it was a jointly administered fund with an equal number of union and employer representatives. Such joint administration was not agreed to. Furthermore, Local 3 urged UECA to reach a collective-bargaining agreement with Local 3 so that an apprenticeship program would be achieved. The bargaining positions of Local 3 in relation to these issues is not evidence of bad faith and in addition did not justify

Expert's attempted withdrawal from the multiemployer unit.

4. Impasse in negotiations

I cannot find that Local 3 has engaged in bad faith bargaining. More than 50 bargaining sessions were held in nearly 4 years of bargaining. In April, 1998, when Expert attempted to withdraw recognition from Local 3, bargaining had been ongoing, and certain proposals and discussions undertaken in the second half of 1997, set forth above, were still continuing. Thus "red-lining" employees, payments to the benefit funds of Locals 3 and 363, placement of foremen in the bargaining unit, payment of supplemental money to employees as opposed to payment into the funds, employment of shop stewards, hire of employees from outside Local 3, subcontracting, and the term of the contract were still the subject of discussions as of April, 1998 when the decertification petition was presented to Micelotta.

I also cannot find that an impasse in negotiations existed in April, 1998. UECA had not withdrawn from negotiations at that time and bargaining issues were still outstanding. Moreover, the Supreme Court has upheld the Board's view that impasse is not an "unusual circumstance" which would permit an employer to withdraw from a multiemployer unit. *Charles D. Bonanno Linen Service*, 454 U.S. 402, 411 (1982); *Atlas Transit Mix Corp.*, 323 NLRB 1144, 1148 (1997).

5. Alleged retaliation

John Micelotta testified that in about November, 1996, five of Expert's employees left a jobsite at the Manhattan Psychiatric Center during a high voltage shutdown in which electricity was shut to the site so that the electric service could be switched over to a new source. According to Micelotta, the men left the job site at the same time in the middle of the workday and quit their jobs. He identified those employees as Freddie Castellano, John Ehler, Ray Garcia, Ernie Graziano and Carl Leuz.

Micelotta spoke with Castellano and Graziano who told him that they were directed by Local 3 to leave the jobsite at that time, and that if they did not do as ordered they would be blackballed or blacklisted and would not be able to work for a Local 3 represented company. Micelotta stated that their conduct injured Expert's reputation.

Castellano and Graziano testified consistently concerning their leaving work at Expert. They stated that about 1 or 2 weeks before leaving Expert they attended a meeting with Local 3 agents at which they were told that when they were ready to leave Expert, Local 3 would help them find employment with a Local 3 contractor. They both completed their work shifts on their last day of work at Rikers Island and began work within the next day or two for a Local 3 employer. On his last day of work, Castellano told Frank Micelotta that he was leaving that day. He did not give any advance notice of his departure. When Graziano told Frank Micelotta that he was

giving 2 weeks' notice, he was immediately discharged. Castellano and Graziano denied being told by Local 3 agents that they would be blackballed or blacklisted and further denied telling Expert's officials that they had been threatened in that manner.

It was stipulated that Garcia and Leuz worked a 7 hour shift, a full scheduled day's work, on their last day of work on Rikers Island on November 4. It was also stipulated that Ehler's last day of work was also on November 4, 1996, and that Local 3 found work for all three men on the next business day, November 6.

McElroen testified that, at the request of employees who are employed by a UECA employer, or non-UECA employer, he "removed" employees from their employer and assigned them to work for a contractor who has a contract with Local 3. He stated that Expert's employees contacted him and sought to become members of Local 3. He stated that they asked him to "take them off the job." He told them that if they gave him enough notice he would attempt to have a job for them. He called contractors who might be interested in hiring them. McElroen told the men that he would attempt to ensure that they remained employed for 1 year so that they would build up their funds in the event of a layoff. He denied telling any employee that if they did not leave their employer they would not have an opportunity to work for a Local 3 contractor.

Based upon the above, I cannot find that Local 3 threatened to blackball or blacklist Expert's employees if they did not leave the Manhattan Psychiatric jobsite. Castellano and Graziano specifically denied being threatened by any Local 3 agent. Moreover, all the employees who, according to Micelotta, left the Manhattan Psychiatric jobsite in the middle of an electrical shutdown were in fact employed at that time at a different jobsite on Rikers Island. In addition, all of them worked a full shift on their last day of work, further contradicting Micelotta.

I accordingly find no credible evidence that Local 3 engaged in any improper conduct with respect to Expert's employees' quitting their employment.

CONCLUSIONS OF LAW

1. The Respondents, United Electrical Contractors Association (UECA) a/k/a United Construction Contractors Association, and the employer-members of UECA, including Expert Electric, Inc., are employers within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since February 23, 1993, Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO has been, and is, the exclusive

representative of the employees in the following appropriate collective-bargaining unit within the meaning of Section 9(a) of the Act:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

4. By withdrawing recognition from Local 3 on June 11, 1998, and refusing thereafter to bargain with it as the representative of the individual-employer members, UECA has violated Section 8(a)(1) and (5) of the Act.

5. By its untimely and improper withdrawal from the multiemployer bargaining unit, and by its withdrawal of recognition on April 21, 1998 from Local 3 as the collectivebargaining representative of its employees, Expert Electric has violated Section 8(a)(1) and (5) of the Act.

6. These unfair labor practices affect commerce within the meaning of Section 8(a)(1) and (5) of the Act.

7. Case No. 2–CA–22399 against the individual-employer members of UECA is dismissed in its entirety.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent UECA has withdrawn recognition from Local 3, it shall be ordered to bargain with it. Having found that Respondent Expert Electric has withdrawn from the multiemployer bargaining unit and has withdrawn recognition from Local 3, it shall be ordered to request reinstatement to UECA as an individual-employer member and agree to representation by UECA in multiemployer bargaining conducted by UECA with Local 3. In this connection, UECA shall be ordered to reinstate Expert Electric as an individual-employer member of UECA.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

A. The Respondent, United Electrical Contractors Association a/k/a United Construction

---

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Contractors Association, its officers, agents, successors, and assigns, shall

(1) Cease and desist from

(a) Refusing to bargain collectively with Local 3, International Brotherhood of Electrical Workers, AFL–CIO, by withdrawing recognition from Local 3 and refusing thereafter to bargain with it as the representative of the individual-employer members.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and resume bargaining as the representative of the individual-employer members of UECA with Local 3, the exclusive representative of the employees in the following appropriate collective-bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association],

but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Reinstate Expert Electric, Inc., as an individual-employer member of UECA.

(c) Within 14 days after service by the Region, post at its facility in New York, NY, copies of the attached notice marked "Appendix B"[15] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 23, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn

---

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondent, Expert Electric, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing from the multiemployer bargaining unit and withdrawing recognition from Local 3.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Request reinstatement as an individual-employer member of UECA.

(b) Recognize Local 3 as the exclusive representative of its employees in the multiemployer bargaining unit, and bargain with Local 3 through UECA as its representative.

(c) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix C"16 Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall

be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 21, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 6, 2001

APPENDIX A

Action Electrical Contracting Corp.
Alco Electric Co.
Atlas Electrical Contractors, Inc.
Bisantz Electric Co., Inc.
Blake Electrical Contracting, Inc.
Bran Electric Corp.
C.B. Electrical
C & L Electric, Inc.
Chapman Electrical Contracting Co.
Con Tech Electric Service Co., Inc.

Cotroneo & Marino's United Electric Co., Inc.
County Wide Electric
DeCeck & Leonard, Inc.
DiFrancia Electric, Inc.
Eaton Electric, Inc.
Eugene Iovine, Inc.
Expert Electric, Inc.
Falcone Electric Corp.
Farica Electric Contracting Corp.
Feola Electric, Inc.
16 If this Order is enforced by a judgment of a United States court of
appeals, the words in the notice reading "Posted by Order of the National
Labor Relations Board" shall read "Posted Pursuant to a Judgment
of the United States Court of Appeals Enforcing an Order of the
National Labor Relations Board."
Ferrara Electrical Controls
G & R Electrical Contracting, Inc.
Gilston Electrical Contracting Corp.
Global Electrical Contracting
Granna Electric
Heller Electric Co., Inc.
Interphase Electrical Corp.
J.K. Electric Corp.
Kew Electric Co.
Lesil Reliable Electric Co., Inc.
Lipco Electric Co.
Lisa Electric, Inc., a/k/a YNR Electric, Inc.
LoBello Electrical Installation
M.P.E. Electrical Contracting Corp., d/b/a Star Electric Corp.
M & W Electric Corp.

Maximum Electrical Contracting Corp.
Milad Contracting Corp.
Modica & Reilly Electric Corp.
Mondl Electric Co., Inc.
Norlin Electrical Contracting Co.
Northern Electrical Contracting
Ozone Electric Corp.
Pantel Contracting Corp.
Paul Mock, Inc.
Point Electrical Ltd.
Positive Electric Association, Inc.
Raymour Electrical Company
Schneider Electric Company, Inc.
Square Electric Co., Inc.
Star Brite Electric Corp.
T. Reilly Electrical Corp.
T & A Electrical Contracting
T & J Electrical Contracting
Tap Electrical Contractors Service, Inc.
Tri-Town Electric Corp.
V & R Electrical Contractors, Inc.
Vintage Electric Corp.
W.T. Hickey Corp.

APPENDIX B

Notice to Employees
Posted by Order o the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 3, International Brotherhood of Electrical Workers, AFL–CIO, by withdrawing recognition from Local 3 and refusing thereafter to bargain with it as the representative of the individualemployer members of the United Electrical Contractors Association.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL on request, recognize and resume bargaining, as the representative of the individual-employer members of United Electrical Contractors Association, with Local 3, the exclusive representative of the employees in the following appropriate collective-bargaining unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field employed by employer-members of Respondent [United Electrical Contractors Association a/k/a United Construction Contractors Association], but excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL reinstate Expert Electric, Inc., as an individualemployer member of UECA.

UNITED ELECTRICAL CONTRACTORS

APPENDIX C

Notice to Employees
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT improperly withdraw from the United Electrical Contractors Association, the multiemployer bargaining unit which represents us in bargaining with Local 3, International Brotherhood of Electrical Workers, AFL–CIO, and we will not withdraw recognition from Local 3, which represents our employees in the multiemployer bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL request reinstatement as an individual-employer member of UECA.

WE WILL recognize Local 3 as the exclusive representative of our employees in the multiemployer bargaining unit, and bargain with Local 3 through UECA as our representative.

EXPERT ELECTRIC, INC.